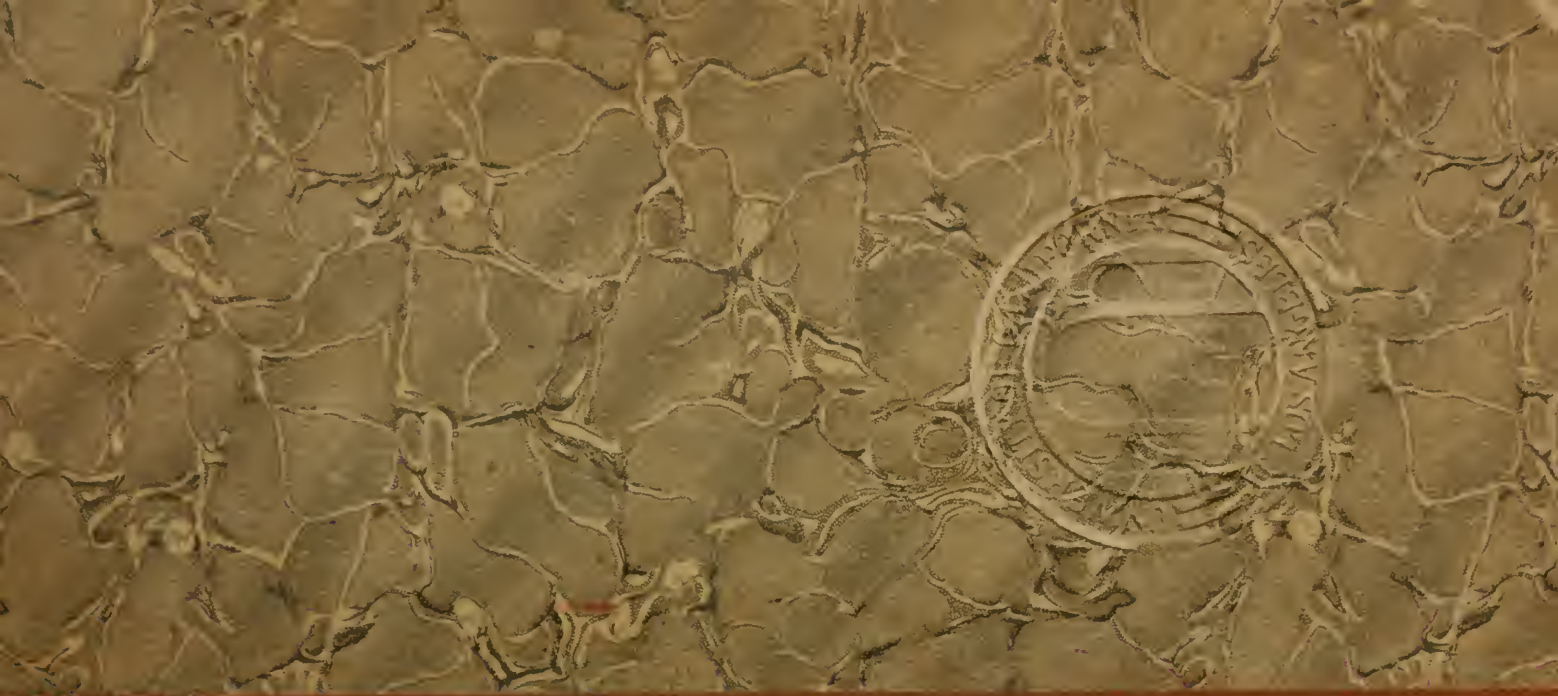

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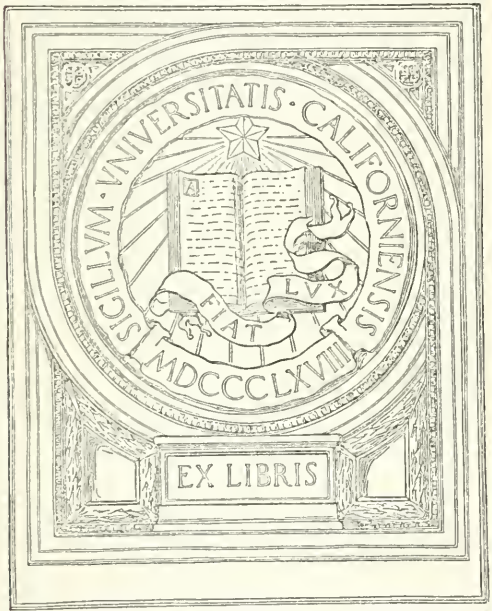

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THE WELSH DISESTABLISHMENT BILL, 1912

WITH EXPLANATORY NOTES

AND COMPARED WITH THE PREVIOUS BILLS AND WITH THE IRISH DISESTABLISHMENT ACT OF 1869

BY

R. W. FOWELL AND L. GEORGE DIBDIN

OF LINCOLN'S INN, BARRISTERS-AT-LAW

Published by

THE CENTRAL CHURCH COMMITTEE FOR DEFENCE AND INSTRUCTION

CHURCH HOUSE, WESTMINSTER, LONDON, S.W.

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THE WELSH DISESTABLISHMENT BILL.

A Bill to terminate the establishment of the Church of England in Wales and Monmouthshire, and to make provision in respect of the Temporalities thereof, and for other purposes in connection with the matters aforesaid.

A general summary of the effects of the Bill will be found at page 97.

[*The text of the Bill is distinguished by a line in the margin.*]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Part I.

Disestablishment and Vesting and Distribution of Property.

Disestablishment.

Disestablishment and prohibition of future appointments.

1. On the *first day of July* next after the passing of this Act (in this Act referred to as the date of disestablishment), the Church of England, so far as it extends to and exists in Wales and Monmouthshire (in this Act referred to as the Church in Wales), shall cease to be established by law, and, save as by this Act provided, no person shall, after the *passing of this Act*, be appointed or nominated by His Majesty or any person, by virtue of any existing right of patronage, to any ecclesiastical office in the Church in Wales.

Cl. 1, note.

This clause is substantially the same as clause 1 of the Bill of 1909 and clause 1 of the Bill of 1895 as amended in Committee. "Established by law." It would seem that the result of the first part of this clause is that all laws dealing with the Church of England as such, whether statutes or common law or case-made law, would cease to be applicable in Wales and Monmouthshire on the "date of disestablishment," *i.e.* July 1, next after the passing of the Act. See clause 35 (3).

The effect is by no means easy to discern with precision. The duties of the parochial clergy and the rights of parishioners with regard to the publication of banns and the solemnisation of marriage in church are attempted to be preserved by clause 22.

Churchyards (not closed) pass under clauses 4 (1) and 8 (1) (*b*) to the burial authorities, Parish or District Councils on the determination of existing incumbencies, except such as have been provided by private benefaction since 1662. Clause 23 contains detailed provisions as to the maintenance, etc. of churchyards transferred under clause 8 (1) (*b*) (see note to clause 23).

The Incumbents' Resignation Acts so far as they apply to Wales appear to be repealed from the date of disestablishment. The Proviso to clause 14 (2) attempts to continue the provision of pensions for incumbents retiring on the ground of infirmity after the date of disestablishment from livings in which they have existing interests. But the case of incumbents who may have resigned before that date, on a pension under the Resignation Acts does not seem to have been dealt with by the Bill. Will the existing incumbent at the date of disestablishment have to pay the pension out of the income he receives in respect of his vested interest? If so, what is to happen if the existing incumbent die before the pensioned incumbent? Clause 4 (1) provides that property vested in the Welsh Commissioners is subject to all charges affecting the property, and the pension is a "charge on the revenues of the benefice" (34 & 35 Vict. c. 44, sec. 10). Possibly the pensioned incumbent will have a claim against the various public bodies, amongst whom the endowments of his late benefice have been divided. Clause 15 which provides for County Councils paying an annuity in lieu of tithe rentcharge seems to apply to *existing* incumbents only.

Cl. 1, note.

The Bill (clause 3 (4)) purports to give the Disestablished Church the power to adapt the Dilapidations Acts to the new circumstances so far as properties transferred to the representative body, e.g. parsonages and other residence houses, are concerned. But it is very questionable whether by any such possible adaptation any part of the machinery of the Dilapidations Acts which presuppose the active participation of bishops, archdeacons, rural deans, diocesan surveyors, and Queen Anne's Bounty, and assume a continued succession of incumbents can really be worked after the changes effected by the Bill. (See *post*, clause 3 (4)).

The Acts of Uniformity and the statutes dealing with clergy discipline cease to be applicable to Wales at the date of disestablishment. But clause 3 (see *post*) is intended to meet the difficulty and prevent the confusion which would arise from the sudden abrogation, so far as the Welsh clergy and churches are concerned, of all ecclesiastical law, administrative, disciplinary and doctrinal. The obscurity, to use no stronger word, that seems to hang about this part of the scheme of the Bill is discussed under clause 3.

The existing statutory machinery for sales, leases, mortgages, exchanges, and other dealings with ecclesiastical property is attempted to be preserved during the vested interest of the holder of an ecclesiastical office at the date of Disestablishment, by clause 25 (1).

The Irish Church Act, 1869 (32 & 33 Vict. c. 42, secs. 2 and 71), contains a similar provision to clause 1 of the Bill, but with an important difference. In the case of Ireland there was an Act of Union (39 & 40 Geo. III. c. 67, article 5), which united the Churches of England and Ireland into one Church, "the doctrine, worship, discipline, and government" of which were "to remain in full force for ever, as the same are now (1800) by law established." The Union, therefore, of the established churches of England and Ireland depended more or less on statute, and could be abolished by statute. What an Act of Parliament could do, it could undo. But the relation of the Welsh dioceses to the rest of the Church of England is entirely independent of, and has never till now been dealt with by an Act of Parliament. The Welsh Bills of 1895 and 1909, and this Bill are thus a new departure.

Cl. 1, note. The second part of clause 1 prevents the appointment of any bishop, dean, canon, archdeacon, or incumbent or any lay officer, as defined in clause 35 (1), during the interval between the passing of the Act and date of disestablishment, so as to confer on the person appointed a vested interest in the new office. But clause 14 provides that such person if previously holding an office in the Church in Wales shall not by reason of the new appointment lose his vested interest in the old office.

Clause 20 (see *post*) gives power to fill up any of the above-mentioned offices which may become vacant during this interval. The Crown and other patrons will have this power, but their appointees will in no case acquire a vested interest in the new office, and in the case of bishops will not be qualified to sit in the House of Lords (clause 2 (2)).

The Irish Act (secs. 10 and 66) contains similar clauses; sub-clause (4) of sec. 66 provided for appointments during the suspense period being made without expense to the appointee in the way of fees or duty. This Bill contains no such exemption. But under clause 20 (3) persons receiving appointments during the interval of suspense are not to be liable to first fruits or tenths.

Ecclesiastical corporations and bishops.

2.—(1) On the date of disestablishment every cathedral and ecclesiastical corporation in the Church in Wales, whether sole or aggregate, shall be dissolved.

This sub-clause is the same as clause 2 (1) of the 1909 Bill and substantially the same as clause 2 (1) of the 1895 Bill as amended in Committee.

At present every bishop, dean, archdeacon, rector, and vicar (of an ancient parish), and the holders of certain other ecclesiastical offices, e.g. canonries or prebends, are corporations sole with perpetual succession. Cathedral chapters, colleges of vicars choral, and some other ecclesiastical bodies consisting of more than one person, are corporations aggregate. The special feature of a corporation is that it continues for legal purposes, notwithstanding the death of the individuals constituting the corporation at any particular time. Property vested in a corporation is enjoyed by the person or persons forming the corporation for the time being and on the

death of any such person does not devolve upon his heirs, but remains the property of the corporation for the use of the next holder of the corporate office. The effect of dissolving all these corporations at the date of disestablishment will be to destroy the present legal organisation of the Church in Wales. There will no longer be any legal continuity of office. The Irish Act contained a similar clause, viz. sec. 13. Cl. 2 (1), note.

(2) On and after the date of disestablishment no bishop of the Church in Wales shall as such be summoned to or be qualified to sit or vote as a Lord of Parliament ; but save as aforesaid every person who is at the *passing of this Act* a bishop, dean, canon, or archdeacon of or the holder of any ecclesiastical office in the Church in Wales, shall during his life enjoy the same title and precedence as if this Act had not passed.

This sub-clause is the same as clause 2 (2) of the 1909 Bill and substantially the same as clause 2 (2) of the 1895 Bill as amended in Committee, and is also similar to sec. 13 of the Irish Act.

The social status of the Welsh clergy, holding "ecclesiastical offices," at the passing of the Bill is not to be taken away. They can, for example, appear at Court under their old titles, and their relative precedence *inter se* is preserved.

In consequence of the creation of ten new English bishoprics in recent times, without any corresponding increase in the number of bishops (twenty-four) who have seats and votes in the House of Lords, the ten bishops last appointed are always out of the House, except that the Bishops of London, Durham, and Winchester take their seats immediately on appointment.

At present all four Welsh Bishops have seats and votes in the House of Lords ; the effect of this sub-clause would be to call up four English Bishops (Ely, Newcastle, Chichester, Norwich).

The Bill of 1895 clause 2 (3) contained similar provisions, but the 1909 Bill would have had the ultimate effect of reducing the total number of Lords spiritual

Cl. 2 (2), note.

(archbishops and bishops), entitled to sit and vote to twenty-two.

Presumably the change from the Bill of 1909 is due to the possibility of a reconstruction of the House of Lords as foreshadowed in the Preamble to the Parliament Act, 1911.

(3) On and after the date of disestablishment no person shall, by reason only of being a bishop, priest, or deacon of the Church in Wales, be disqualified or liable to any penalty for sitting or voting in the House of Commons.

This provision is new.

By 41 Geo. III. c. 63, no priest or deacon, or minister of the Church of Scotland is capable of being elected a member of the House of Commons. This sub-clause is intended to remove this disability in respect of the clergy of the disestablished Church in Wales and place them on an equality for this purpose with Nonconformist ministers.

Ecclesiastical law and courts.

3.—(1) As from the date of disestablishment, ecclesiastical courts and persons in Wales and Monmouthshire shall cease to exercise any jurisdiction, and the ecclesiastical law of the Church in Wales shall cease to exist as law.

This sub-clause takes the place of portions of sub-clauses 12 (1) and 12 (1) (*a*) of the Bill of 1909, but it differs from them. It was there provided that "no Ecclesiastical Court or person shall have *any coercive* jurisdiction," whereas the present Bill requires that Ecclesiastical Courts and persons "shall cease to exercise *any* jurisdiction." In its present shape the Bill follows the course adopted in the Irish Act, sec. 21. It seems consistent that when the laws which regulate the Courts have been repealed and the offices of the judges and other officials so far as they are corporate offices (clause 2 (1)) have been dissolved these Courts should cease to exist. They have hitherto exercised two jurisdictions, viz.: (1) spiritual and voluntary jurisdiction conferred by the Bishops on the Ecclesiastical judges as their delegates

to try ecclesiastical causes and (ii) coercive jurisdiction which is conferred by the State and is the right to invoke the civil power to enforce the sentences of the ecclesiastical courts. This consists in the power of ecclesiastical judges by process of *significavit* to procure the imprisonment of persons who disobey the orders of their courts. The Bill of 1909 apparently only dealt with the latter. The present Bill abolishes both. **Cl. 3 (1), note.**

(2) As from the same date the then existing ecclesiastical law and the then existing articles, doctrines, rites, rules, discipline, and ordinances of the Church of England shall, with and subject to such modification or alteration, if any, as after the *passing of this Act* may be duly made therein, according to the constitution and regulations for the time being of the Church in Wales, be binding on the members for the time being of the Church in Wales in the same manner as if they had mutually agreed to be so bound, and shall be capable of being enforced in the temporal courts in relation to any property which by virtue of this Act is held on behalf of the said Church or any members thereof, in the same manner and to the same extent as if such property had been expressly assured upon trust to be held on behalf of persons who should be so bound.

This sub-clause is with one exception similar to clause 12 (1) of the Bill of 1909 and clause 14 of the Bill of 1895 and sec. 20 of the Irish Act. Its object seems to be to prevent the confusion which would fall upon the Welsh Church if the ecclesiastical law being abrogated on July 1, 1913, there was nothing to take its place and the Welsh clergy were left amenable to no rules or discipline whatever. The design seems to be to preserve the present law (until it has been altered by the Church acting as a voluntary Society) so as to make it binding as a matter of contract in the temporal courts. It is not, however, easy to see how this is possible, side by side with the abolition as from the date of disestablishment of all the ecclesiastical courts, judges and jurisdiction.

Cl. 3 (2), note.

For example, a Welsh incumbent after disestablishment commits havoc in his church under the guise of "restoration." The consent of the Ordinary by faculty would have been necessary prior to disestablishment. But the court and the judge by which a faculty could have been granted and the jurisdiction by which authority over the matter would have been exercised having been abolished, no faculty is possible. Apparently it is supposed that the incumbent in a case of this sort will be liable to be stopped by injunction in the temporal courts, and perhaps also be liable in damages in the same courts. But this can only be so if the temporal court assumes to itself a jurisdiction which it certainly does not now possess of deciding whether the alterations complained of are in accordance with ecclesiastical law (e.g. ornaments connected with disputed ritual), or are desirable, or are approved by the parishioners or otherwise. The difficulty is even greater with regard to clergy discipline, dilapidations, election and admission of churchwardens, control of church seats and similar matters of ecclesiastical administration. (*See* note to clause 3 (4).) In the corresponding sub-clause of the Bill of 1909 words were introduced purporting to preserve after disestablishment the jurisdiction and authority of the Archbishop of Canterbury and his courts. But, as pointed out in a prior edition of this work, the effect of this attempted exception was very difficult to understand, and it has not been repeated in the present Bill.

Provided that no alteration in the articles, doctrines, rites, or, save so far as may be rendered necessary by the passing of this Act, in the formularies of the Church in Wales, shall be so far binding on any ecclesiastical person having any existing interest saved by this Act, as to deprive him of that interest, if he, within one month after the making of the alteration, signifies in writing to the representative body hereinafter mentioned his dissent therefrom.

It will be observed that the saving of the rights of existing incumbents, etc., in Wales who may elect not to be bound by changes made by the disestablished Church,

only extends to the articles, doctrines, rites and formularies of the Church. It would seem that existing incumbents, etc., will be bound by changes made in matters of discipline and general administration. For example, they will be subject to any new courts which the disestablished Church may set up (clause 3 (3)) and to any new arrangements which may be made to take the place of the present law of dilapidations. Cl. 3 (2), note.

(3) The said constitution and regulations of the Church in Wales may, notwithstanding anything in this section, provide for the establishment for the Church in Wales of ecclesiastical courts, and, if the Archbishop of Canterbury consents, for appeals from any of the courts so established being heard and determined by the provincial court of the archbishop, and the archbishop may, with the approval of His Majesty in Council, give such consent, but no such courts shall exercise any coercive jurisdiction and no appeal shall lie from any such court to His Majesty in Council.

This sub-clause should be read with clause 13 (1) which gives power to the disestablished Church to make a constitution or constitutions and regulations for its future government. As part of the new scheme ecclesiastical courts can be set up. They will have no jurisdiction but merely a consensual authority arising from the agreement of all members of the Church to be bound by their decisions. The disestablished Church is expressly empowered by this sub-clause, subject to the consent of the Archbishop of Canterbury, to take appeals to the Court of the Province of Canterbury, of which province the Welsh dioceses have hitherto been part. This court is the Court of Arches. It would seem that the Judge in dealing with such appeals will have to decide them, not according to the ecclesiastical law binding on the rest of the province, but according to whatever constitutions and regulations may be adopted for the time being by the disestablished Church. The appeal from the Arches to the Judicial Committee of the Privy Council is abolished.

Cl. 3 (4). (4) The power of making by such constitution and regulations alterations and modifications in ecclesiastical law shall include the power of altering and modifying such law so far as is (*sic*) embodied in the Church Discipline Act, 1840, the Public Worship Regulation Act, 1874, the Clergy Discipline Act, 1892, or the Ecclesiastical Dilapidations Acts, 1871 and 1872, or any other Act of Parliament.

This sub-clause specifies certain of the more important ecclesiastical statutes and expressly enacts that the new constitution and regulations, provided for in clause 13 (1), may embody, with such alterations as may seem desirable, these Acts. The difficulty of applying statutory machinery devised for an established Church to the circumstances of a disestablished Church, in which agreement of the members with each other is substituted for law, has already been pointed out with reference to the transition period after disestablishment and before the scheme of government of the disestablished Church has been framed and brought into operation. We are now brought face to face with the same difficulty in relation to this new scheme of government which it is assumed will be adopted. It is to be noticed in passing that, having regard to the present divergence of view between different Church parties and to the great extent of ground —nothing less than the whole area of Church law, discipline and administration—which must be covered by the constitution and regulations of the disestablished Church, it is probable that a considerable interval—perhaps some years—will elapse before the new system is agreed upon and in working order.

Further, it is difficult to see how the Acts mentioned in this sub-clause and other Acts like them can ever be "modified" or "altered" to suit the case. They all assume the service of official persons whose offices will have been abolished or whose co-operation on the contractual basis cannot be secured.

(5) As from the date of disestablishment the bishops and clergy of the Church in Wales shall cease to be members of or be represented in the Houses of Convocation of the Province of Canterbury, but nothing in this Act shall affect the powers of those Houses so far as they relate to matters outside Wales and Monmouthshire.

This sub-clause brings into clear prominence the effect of the Bill in violently interfering with the organisation of the Church of England. The Convocation of Canterbury will lose certain of its members, and four dioceses of the Province will cease to be represented in either House, by the mere action of Parliament without the consent and indeed in spite of the remonstrance of Convocation itself. Nothing of the kind has ever happened before. Cl. 3 (5), note.

Although nothing is said as to the future position of the Welsh bishops, it seems to follow from this and other provisions that they will cease, so far as Parliamentary action is operative, to be subject to the primacy of the Archbishop of Canterbury. It is apparently assumed that they will cease to be Ecclesiastical Commissioners and Governors of Queen Anne's Bounty.

Vesting of Property.

4.—(1) As from the date of disestablishment there shall, save as by this section provided, vest in the Welsh Commissioners hereinafter mentioned— Vesting of property.

(*a*) all property vested in the Ecclesiastical Commissioners or Queen Anne's Bounty, which is ascertained as hereinafter mentioned to be Welsh ecclesiastical property; and

(*b*) all property not so vested, and not consisting of charges on the common fund of the Ecclesiastical Commissioners, which, at the *passing of this Act*, belongs to or is appropriated to the use of any ecclesiastical office or cathedral corporation in the Church in Wales, or the holder of any such office as such;

subject, in the case of all such property, to all tenancies, charges, and incumbrances, and to all rights and interests saved by this Act, affecting the property.

This sub-clause corresponds to clause 3 (1) of the Bill of 1909 and clause 3 of the Bill of 1895.

Cl. 4 (1), note.

The effect is to vest in the Welsh Commissioners (as to whom see *post*) on the date of disestablishment,

(*a*) The central funds (as it were) of the Church in Wales, i.e. the property of the Ecclesiastical Commission derived from Welsh Church sources and any property, e.g. tenths, of Queen Anne's Bounty similarly derived from Welsh Church sources.

(*b*) Certain classes of separate properties held at the date of the passing of the Act by or for the benefit of ecclesiastical persons or corporations, e.g. the parsonage and ancient endowments of every benefice, the houses and estates of every dean and chapter, and the residence and other property (if any) of each bishop. The cathedrals and parish churches and burial-grounds are also vested in the Welsh Commissioners under this sub-clause (see definition of property, clause 35).

Income not arising from property real or personal and not enjoyed as of right, that is to say income from voluntary sources, is not dealt with in the Bill, nor is all "property" applicable to Church purposes. For instance, funds of diocesan and other societies in so far as they are not held on behalf of or as appropriated to the use of any ecclesiastical office, are not dealt with. Such funds would, in fact, be wholly of modern origin and of small amount, as the incomes of such societies are almost wholly derived from voluntary contributions year by year. Property (if any) held upon charitable trusts of an ecclesiastical character appears not to come within the scope of the disendowment clauses unless the trusts should be such as to appropriate the property or the income thereof to some particular ecclesiastical office or cathedral corporation. As to both (*a*) and (*b*) the transfer is to be subject to existing tenancies and also incumbrances (e.g. loans on the security of the endowment of a benefice), and subject also to the existing or vested interest of the holders at the date of the passing of the Act of the various offices affected. Thus an incumbent of a parish on the day the Bill becomes (if it becomes) law may continue incumbent, or he may before or after disestablishment vacate his Benefice for the purpose of taking another ecclesiastical office in Wales.

In the former case he will be entitled to retain possession of his glebe, parsonage, and other emoluments, except tithe, transferred to the County Council under clause 8 (1) (*c*), and to receive, as explained later on (clause 15) the equivalent for the net value of such tithe, so long as he retains the incumbency. In the latter case he will continue, so long as he remains in the service of the Church in Wales, to be entitled to the same emoluments (except the residence house) but will have to pay the income over to the Representative Body. Legally constituted pew rents where existing at the date of disestablishment will continue so long as the existing incumbent's vested interest lasts. On the determination of the vested interest presumably pew rents will cease to be payable on their present basis, and the Welsh Commissioners will receive nothing from that source. **Cl. 4 (1), note.**

The existing interests saved are the interests of individuals holding ecclesiastical offices by a freehold tenure. In the case of property "appropriated to the use of any ecclesiastical office or cathedral corporation" in which no officer has any personal interest the vesting in the Welsh Commissioners would be subject to no such saving. In the case of a cathedral the personal interest of the dean and of each Canon in the income to which he is entitled out of the capitular property would be saved, but some portion of the capitular income goes to general expenses for the upkeep of the fabric and maintenance of the services, and in such portion no temporary interest would be saved. If, however, the portion allotted to the fabric amounted to a Fabric Fund, it would be transferred to the Representative Body under clause 8 (1) (*a*) (iii), but this would not apply to the portion usually devoted to the maintenance of services.

A curacy is an "Ecclesiastical Office" as defined by clause 35 (1). If in any case there are ancient endowments belonging to a curacy, such endowments will be secularised. Curacy endowments, however, are for the most part private benefactions or derived from English Church sources, and therefore will be or may be transferred to the Representative Body. Presumably the tenure of the office of a curate would not be freehold nor deemed equal to freehold so as to confer an existing interest.

The Irish Act (secs. 11, 12, 14) went upon rather

Cl. 4 (1), note.

different lines. The property vested in the Ecclesiastical Commission for Ireland was transferred to the Commissioners appointed by the Act from the date of its passing. All other Irish Church property (including tithe) was transferred to the Commissioners on January 1, 1871 (the date of disestablishment), and persons entitled to vested interests instead of remaining in possession of the actual endowments, received their equivalent in income from the Commissioners.

(2) All plate, furniture, and other moveable chattels belonging to any church affected by this Act, or used in connexion with the celebration of Divine worship therein, shall vest in the Representative Body hereinafter mentioned if and when incorporated :

Provided that if such a body is not incorporated at the date of disestablishment all such moveable chattels as aforesaid shall, until the incorporation of such a body, remain vested in the same persons and be applicable to the same purposes as before the date of disestablishment.

The Bills of 1909 (clause 3 (2)) and 1895 (clause 8 (1)), and the Irish Act (sec. 30) contained similar provisions.

It should be noted that " church " includes a cathedral (clause 35).

The property referred to in this sub-clause is the only property which under the Bill of 1909 would not have passed through the hands of the Welsh Commissioners. All other property would have been handed over in the first instance to the Welsh Commissioners, and whatever portion the disendowed Church would have been permitted to enjoy would have been handed back to it and vested in the Representative Body.

Under the present Bill, however, there are other classes of property which will not pass through the Welsh Commissioners, viz. the property of ecclesiastical benefices derived by them through the Ecclesiastical Commissioners and Queen Anne's Bounty from English Church sources.

" Remain vested in the same persons," i.e. in the case of a parish church the churchwardens, who are a corporation for this purpose. But by clause 2 (1) all ecclesiastical corporations are dissolved.

It would seem that organs and bells, which generally are not moveable chattels, will pass with the freehold of the Church to which they are affixed. **Cl. 4 (2), note.**

Apportionment of property by Ecclesiastical Commissioners and Queen Anne's Bounty.

5.—(1) The Ecclesiastical Commissioners shall, as soon as may be after the *passing of this Act* and before the date of disestablishment, ascertain and by order declare what property vested in them at the *passing of this Act*, or under the provisions hereinafter in this section contained, consists of property of either of the classes or descriptions mentioned in Part I. of the First Schedule to this Act, and property so ascertained and declared shall, subject to the adjustments made in accordance with Part II. of the same schedule, be Welsh ecclesiastical property within the meaning of this Act.

The preceding clause provides for the vesting in the Welsh Commissioners of *inter alia* what is described as "Welsh Ecclesiastical property": this clause defines the property which comes under that description. It comprises property of two classes: (1) vested in the Ecclesiastical Commissioners; (2) vested in Queen Anne's Bounty. Sub-clause (1) is concerned with "Welsh ecclesiastical property vested in the Ecclesiastical Commissioners," in which is to be included not only property so vested at the passing of the Act, but also property which by sub-clause (3) of this clause is directed to be so vested, and, by virtue of this sub-clause and the two parts of the First Schedule, property of this class comprises—

(1) All the property in Wales now belonging to the Ecclesiastical Commissioners which has been derived by them from Welsh ecclesiastical corporations, and all property in Wales and funds representing the proceeds of sales or leases of or other dealings with the Ecclesiastical Commissioners' property wherever situate formerly belonging to Welsh ecclesiastical corporations (Schedule I. Part I. (1)). Property of the Ecclesiastical Commissioners in Wales but formerly belonging to English Church Preferments is also included, but in exchange

Cl. 5 (1), note.

the Ecclesiastical Commissioners retain (1) such property as they have in England formerly belonging to Welsh Preferments, and (2) a capital sum out of the proceeds of sale above mentioned of property derived from Welsh Church preferments sufficient to equalise the exchange (Schedule I. Part II.(1)).

(2) Property and funds held by the Ecclesiastical Commissioners on behalf of Benefices, etc., and derived from other sources than grants of the Ecclesiastical Commissioners. This will include funds and property representing the proceeds of sale, etc., of ancient glebe, benefactions and also that portion of property vested in the Ecclesiastical Commissioners by clause 5 (3) being property "towards" the purchase of which grants made by the Ecclesiastical Commissioners have been applied which did not come from such grants.

Such "Welsh ecclesiastical property" will go over to the Welsh Commissioners "subject to all charges and incumbrances."

There are two exceptional charges upon the Common Fund of the Ecclesiastical Commissioners made in pursuance of statutory authority, expressly in respect of their revenues from Welsh property, which should, therefore, fall upon their Welsh property to be transferred to the Welsh Commissioners. These are: (*a*) a permanent annual charge of £1500 for the endowment of Lampeter College (under 16 & 17 Vict. ch. 82, etc.) and (*b*) a permanent annual charge of £450 for providing Welsh services in London (under 6 & 7 Vict. ch. 77).

The extent and particulars of the property of the classes above mentioned are to be ascertained and declared by order of the Ecclesiastical Commissioners to be made before the date of disestablishment, with the concurrence of the Welsh Commissioners or in default of such concurrence with the approval of His Majesty in Council given on the advice of the Judicial Committee (clause 5 (4)).

The Welsh ecclesiastical property vested in the Ecclesiastical Commissioners and ascertained as above mentioned will from the date of its transfer to the Welsh

Commissioners bear, so far as it is sufficient, the charges for Welsh Church purposes now borne by the Common Fund of the Ecclesiastical Commissioners in respect of bishops, chapters, archdeacons, and other non-parochial officers, and to that extent the Common Fund will be released from these charges (Schedule I. Part II. (2)). These charges come to an end with the cessation of vested interests. (Clause 6 and proviso (*a*)).

Cl. 5 (1), note.

(2) Queen Anne's Bounty shall as soon as may be after the *passing of this Act*, and before the date of disestablishment, ascertain and by order declare what property vested in them at the *passing of this Act*, or under the provisions hereinafter in this section contained, is property of the class or description mentioned in the Second Schedule to this Act, and all property so ascertained and declared shall be Welsh ecclesiastical property within the meaning of this Act.

This makes parallel provisions for the ascertainment of the "Welsh ecclesiastical property vested in Queen Anne's Bounty" to those contained in clause 5 (1) in relation to such property vested in the Ecclesiastical Commissioners, but in the case of Queen Anne's Bounty there is nothing corresponding to the corporate property of the Ecclesiastical Commissioners. Queen Anne's Bounty do not possess and never have possessed any property in Wales in the ordinary sense of the word. They have been instrumental in acquiring property for Benefices, but the only "property" locally situate in Wales which belongs to them for their corporate purposes or is at this time vested in them as a corporation is the right to receive the first fruits and tenths of Welsh ecclesiastical offices. The revenue from first fruits will be abolished as from the date of disestablishment: the revenue from tenths will continue only as long as holders of ecclesiastical benefices subject to the payment of tenths retain their existing interests, and from the date of disestablishment the tenths so continuing to be payable will be paid to the Welsh Commissioners or as they may direct (clause 19).

This sub-clause and the Second Schedule consequently

Cl. 5 (2), note.

are concerned only with property vested in the Governors of Queen Anne's Bounty for the benefit of ecclesiastical benefices and offices, including that which is so vested in them by the operation of clause 5 (3) of the Bill, that is to say property towards the purchase of which grants of Queen Anne's Bounty have been applied. The property so vested in the Governors of Queen Anne's Bounty includes property and funds representing grants made to benefices by the Bounty and property towards the purchase of which grants from the Bounty have been applied; private benefactions: proceeds of sales of land originally acquired for benefices through the Bounty: proceeds of the redemption of tithe rent charges and sales of parsonage houses.

The grants of Queen Anne's Bounty have been made from two sources: (1) the Royal Bounty Fund (being the revenue from first fruits and tenths of English and Welsh ecclesiastical offices) and (2) the Parliamentary Grants Fund being eleven grants of £100,000 each made by Parliament between the years 1809 and 1820 as an addition to the resources of the Bounty for the augmentation of the incomes of the poor clergy in England and Wales. It appears from the evidence appended to the Report of the Welsh Church Commission (1906–1908) (see vol. ii. pp. 267–268) that £176,700 was allotted by the Bounty out of the Parliamentary Grants Fund to Welsh benefices, and that down to the year 1906 £487,350 had been allotted to Welsh benefices out of the Royal Bounty Fund while the first fruits and tenths received from Wales down to the same date had amounted to £163,000 only, that is to say that of the property derived from grants out of the Royal Bounty Fund two thirds have come from English sources.

For the purpose of determining what portion of the property vested in Queen Anne's Bounty shall be transferred to the Welsh Commissioners, the Bill lays down a principle of division of such property into (1) property derived from Welsh sources and (2) property derived from sources other than Welsh sources.

All property vested in the Governors of Queen Anne's Bounty is to be regarded as Welsh ecclesiastical property going over to the Welsh Commissioners except that portion which has been derived from grants out of the English portion of the Royal Bounty Fund, that is to say

except about two thirds of the property derived from grants out of the Royal Bounty Fund. In the case of funds in the hands of the Bounty representing the proceeds of sale of parsonage houses, the whole will be regarded as Welsh ecclesiastical property although the parsonage house sold may have been acquired wholly or partly by grants out of the Royal Bounty Fund. Cl. 5 (2), note.

Included in the Welsh ecclesiastical property vested in Queen Anne's Bounty will therefore be property derived from private benefactions; about one third of the property derived from grants out of the Royal Bounty Fund: the whole of the property derived from grants out of the Parliamentary Grants Fund: that portion of properties towards the purchase of which grants have been made by the Bounty which was not acquired out of such grants: and proceeds of redemption of tithe rent charges.

(3) There shall as from the passing of this Act become vested in the Ecclesiastical Commissioners and Queen Anne's Bounty respectively all property (other than ecclesiastical residences) belonging to or appropriated to the use of any ecclesiastical office or cathedral corporation in the Church in Wales, or the holder of any such office as such, towards the purchase of which grants made by the Ecclesiastical Commissioners and Queen Anne's Bounty respectively have been applied; but such vesting shall not affect any beneficial interest in any such property.

This sub-clause is new. The object of it is to bring into the same class with property already vested in the Ecclesiastical Commissioners and Queen Anne's Bounty respectively all property (other than ecclesiastical residences) belonging to benefices or cathedral corporations towards the purchase of which grants of the Ecclesiastical Commissioners and Queen Anne's Bounty have been applied, and this is done with a view to simplifying the provisions as to the disposition of the Welsh Church property.

Grants of capital made by the Ecclesiastical Commissioners or Queen Anne's Bounty to benefices and

Cl. 5 (3), note.

retained by them on behalf of such benefices are already vested in the Ecclesiastical Commissioners and Queen Anne's Bounty to hold for the benefit of the benefices. Where such grants of capital have been expended in the purchase of real property such real property is vested in the ecclesiastical corporation for whose benefit it was purchased. This sub-clause will vest in the Ecclesiastical Commissioners and Queen Anne's Bounty all property so purchased (other than ecclesiastical residences) so that it will be placed upon the same footing as capital grants which have never passed out of the hands of those bodies. Ecclesiastical residences are excepted because in the scheme of the Bill from whatever source they may have been derived they are dealt with in one way, viz., by vesting in the Welsh Commissioners and transfer by them to the Representative Body. There will thus be or become vested in the Ecclesiastical Commissioners all grants of capital made by the Ecclesiastical Commissioners and all property derived or partly derived from such grants (residences excepted). Similarly there will be or become vested in Queen Anne's Bounty all grants of capital made by Queen Anne's Bounty and all property derived or partly derived from such grants (residences excepted).

(4) Orders of the Ecclesiastical Commissioners and Queen Anne's Bounty under this section and the schedules therein referred to shall be made with the concurrence of the Welsh Commissioners, or, in default of such concurrence, with the approval of His Majesty the King in Council given on the advice of the Judicial Committee of the Privy Council.

The effect of the whole clause (including the first and second schedules) compared with the corresponding provisions of the 1909 Bill which were the same in the 1895 Bill as re-drafted in Committee, may be stated as follows :

1. The former Bills disposed of all Church property locally situate in Wales and Monmouthshire or the proceeds of such property whether belonging or formerly belonging to English or Welsh Ecclesiastical Corporations, and all property locally situate outside Wales (or the proceeds of such property) belonging to Welsh Ecclesiastical Corporations.

Cl. 5 (4), note.

The Bill of 1912 disposes of property or the proceeds of property (wherever situate) belonging or formerly belonging to Welsh Ecclesiastical Corporations: and of the Ecclesiastical Commissioners' property in Wales derived from English Church Preferments, but while such English Church property goes over to the Welsh Commissioners for secular purposes property of the Ecclesiastical Commissioners in England but derived from Welsh Church Preferments is retained by the Commissioners, and the Ecclesiastical Commissioners are allowed to deduct the amount of the difference in value between these two classes of property from the proceeds of sales of properties formerly belonging to Welsh Church Preferments before handing such proceeds over to the Welsh Commissioners.

2. The results of this change of principle are:

(1) That the property in Wales now belonging to English benefices is not taken away. Under the Bill of 1909 (clause 18) while this property would have gone over to Welsh County Councils, &c., the English benefices would have had to be compensated out of the Common Fund of the Ecclesiastical Commissioners.

It is not known what is the amount of this property, but it is believed to be small. To the extent of the value of such property the change operates as a remission of a burden which by the Bill of 1909 would have been thrown on the Common Fund of the Commissioners.

(2) That while the property of the Ecclesiastical Commissioners in Wales but formerly belonging to English Church Preferments is secularised the property of the Ecclesiastical Commissioners in England formerly belonging to Welsh Preferments is not secularised, and as the English Church property of the Ecclesiastical Commissioners in Wales largely exceeds their Welsh Church property in England, the Ecclesiastical Commissioners are allowed to retain out of capital moneys which would otherwise go over to the Welsh Commissioners for secular purposes a sum equal to the difference in value between these two classes of properties.

Cl. 5 (4), note.

3. By the Bill of 1909 the Welsh property of the Ecclesiastical Commissioners and Queen Anne's Bounty and the properties of Welsh benefices consisting of or derived from grants from the Ecclesiastical Commissioners and Queen Anne's Bounty were treated as ancient endowments of the Welsh Church.

All Queen Anne's Bounty grants or the proceeds thereof, except such as were represented by residence houses or parsonage house funds, were confiscated for secular purposes.

As regards the Ecclesiastical Commissioners, grants of capital and real property were distinguished from grants of annuities charged on the Common Fund. The capital and real property grants were to be secularised; the grants of annuities charged on the Common Fund were to be resumed by the Ecclesiastical Commissioners, subject to existing interests.

4. In the Bill of 1912 a new principle has been adopted as regards the properties and incomes of benefices derived from the "Central" funds of the Ecclesiastical Commissioners and Queen Anne's Bounty. This new principle (which is rather to be inferred than anywhere actually laid down) is to distinguish between:

(*a*) Grants or the proceeds of grants *from Welsh sources* of the "Central" funds; and

(*b*) Grants or the proceeds of grants *from English sources* of the "Central" funds.

Grants from *Welsh* sources are treated as ancient endowments of the Welsh Church and are to be secularised

Grants from *English* sources are retransferred to the Ecclesiastical Commissioners or Queen Anne's Bounty as the case may be. and those bodies are respectively given power, if they see fit, to hand these over *en bloc* to the Representative Body (clause 6 (*c*)).

5. Different modes are adopted for carrying out this principle as regards Queen Anne's Bounty and the Ecclesiastical Commissioners.

6. In the case of Queen Anne's Bounty the mode in which the division between grants from English Church sources and grants from Welsh Church sources is to be made is explained in the note to sub-clause (2) of clause 5. Grants or the proceeds of grants of the Bounty from

English Church sources are to be resumed by the Bounty with liberty (clause 6(c)) to transfer the same to the Representative Body. Cl. 5 (4), note.

7. In the case of the Ecclesiastical Commissioners it happens that the income of the Commissioners from Welsh Church sources is exceeded by the aggregate of the charges upon the Common Fund for Welsh Church purposes other than parochial purposes, that is to say, for bishopries, archdeaconries, and deans and chapters.

Inasmuch as the revenues of the Commissioners from Welsh Church sources are thus more than exhausted in defraying these non-parochial charges it follows that *all* grants except grants of actual land or tithe rentcharge in Wales made by the Ecclesiastical Commissioners for parochial purposes (i.e. for benefices and curates) in Wales have come out of property of the Commissioners derived from English sources.

All grants of the Commissioners to Welsh benefices (whether of capital sums or charges on the Common Fund) or the property representing the same are therefore to be resumed by them, with power (clause 6 (*c*)) for the Commissioners to transfer such grants or property or the value thereof *en bloc* to the representative body. The charges upon the Common Fund of the Commissioners for non-parochial purposes of the Church in Wales will come to an end with the cesser of existing interests therein (clause 6), and so long as they continue are to be borne by the Welsh Church property of the Ecclesiastical Commissioners which goes over to the Welsh Commissioners (to the extent that that property is able to bear these charges) (First Sched., Pt. II. (2)).

8. This summary of the effects of the clause deals with the *ultimate* distribution of the properties: the ultimate effect will be delayed (as in the Bill of 1909) by the saving of existing interests. Properties and funds transferred to the Welsh Commissioners or any secular authority, to the Ecclesiastical Commissioners, to Queen Anne's Bounty or to the Representative Body (in the last case whether as a matter of obligation or by the exercise of the liberty given to the Ecclesiastical Commissioners and Queen Anne's Bounty) are charged, in whosesoever hands they may for the time be, with the making of the necessary payments to preserve existing interests. (Clauses 4 (1) and 6 (*c*).)

Powers and liabilities of Ecclesiastical Commissioners and Queen Anne's Bounty after disestablishment.

6. As from the date of disestablishment, any liability or power of the Ecclesiastical Commissioners or Queen Anne's Bounty to make payments for any ecclesiastical purpose in or connected with the Church in Wales shall cease :

Provided that—

(*a*) they shall continue to make such payments as are required for the purpose of preserving any existing interests ; and

(*b*) nothing in this Act shall prevent them from carrying into effect any contract made before the passing of this Act for the sale or purchase of any property affected by this Act or otherwise in relation to any such property, or from making any payments which under this Act they are required or authorised to make ; and

(*c*) it shall be lawful for the Ecclesiastical Commissioners and Queen Anne's Bounty, if they think fit, within one year after the date of disestablishment, to transfer to the representative body the whole or any part of the property specified in Part I. and Part II. respectively of the Third Schedule to this Act, and for the Ecclesiastical Commissioners to charge their Common Fund and Queen Anne's Bounty to charge the Royal Bounty Fund with the payment to the Representative Body of perpetual annuities not exceeding, in the case of the Ecclesiastical Commissioners, the annual value of the property mentioned in Part III. of the Third Schedule to this Act, and, in the case of Queen Anne's Bounty, the annual value of the property mentioned in Part IV. of that

schedule, subject to the payment thereout by the Representative Body of such sums as may be required for preserving existing interests in any such property. Cl. 6.

Clause 6 (*a* and *b*) is the same as clause 18 (3) of the 1909 Bill, but proviso (*c*) is new.

The Ecclesiastical Commissioners may continue to make payments necessary to preserve "existing interests," but an incumbent retired before the passing of the Act does not come within the description of persons having existing interests (clause 4 (1), 14 and 35 (1)) and consequently the Commissioners would have no power after the date of disestablishment to pay the grants made by them under their Pension scheme to such retired incumbents.

Proviso (*c*) enables the Ecclesiastical Commissioners and Queen Anne's Bounty (if they see fit to do so) first of all to transfer to the Representative Body the funds and property representing the grants of those Bodies to benefices in Wales from English Church sources (see notes to previous clause) whether those grants in the case of the Ecclesiastical Commissioners have been made by way of appropriation of capital sums or by charge upon the Common Fund of the Commissioners.

In the case of the Ecclesiastical Commissioners a large number of curate grants have been made of a temporary character by way of charge upon the Common Fund so long as they are continued. The Proviso (*c*) coupled with Part III. (1) of the Third Schedule to the Bill, enables the Commissioners, if they see fit, to turn these temporary charges into a permanent annual charge in favour of the Representative Body.

This proviso further gives to the Ecclesiastical Commissioners and Queen Anne's Bounty the power, if they see fit, to make an additional provision for the disestablished Church by way of the grant of new perpetual annuities not exceeding the maximum amounts there expressed, that is to say, new perpetual annuities equal to the average annual amounts which during the last seven years have been granted for the augmentation of Welsh benefices or the provision of curates in Welsh

Cl. 6, note.

parishes by the Commissioners and the Bounty respectively out of their annual appropriations of surplus income derived from English Church sources.

Mr. McKenna in introducing the Bill explained that the new perpetual annuity in the case of the Ecclesiastical Commissioners would be of the maximum amount of about £28,000 and in the case of Queen Anne's Bounty of the maximum amount of about £3,000, and he added that while he was assured that the Ecclesiastical Commissioners and Queen Anne's Bounty would exercise in favour of the disestablished Church the liberty to transfer to the Representative Body the amount of existing grants of which under the Bill they would resume possession, he had no such assurance in regard to the new annuities.

The liberty to create these new annuities in favour of the disestablished Church is presumably granted, on the ground that the Church in Wales has at present an " expectation " of receiving such further grants from English Church sources.

It is, however, one thing for such Bodies as the Ecclesiastical Commissioners and Queen Anne's Bounty out of their annual surpluses as and when they arise to make grants which on the average may have been of such amounts as £28,000 and £3,000 year by year, and quite another thing for them to charge their revenues in perpetuity with annuities of such amounts. The effect would be to give to the disestablished Church a preference over the English Church in the distribution of English Church revenues which appears to be singularly inconsistent with the objects of the Bill which are to deprive the Welsh Church of its own resources. The object of the provision would appear to be, to judge from Mr. McKenna's speech on the introduction of the Bill, to show that it is possible to take from the aggregate endowments of £260,000 per annum now enjoyed by the Church, a sum of £173,000 per annum for secular purposes and yet leave to the Church a provision of £180,000 made up of (1) the " minimum " income left to the Church of £87,000 ; (2) the value of the life interests not destroyed £62,000 per annum ; (3) the new annuities which the Ecclesiastical Commissioners and Queen Anne's Bounty are to be at liberty to provide out of English Church sources of £31,000 per annum.

Cl. 6, note.

Of these, needless to say, the only provision really left to the Welsh Church is the minimum income of £87,000. The value of the existing interests will be consumed by the individuals who enjoy them and cannot in any way be made available as a permanent provision for the disestablished Church, while the "new" annuities amounting to £31,000 per annum, if the Ecclesiastical Commissioners and Queen Anne's Bounty were able and could in justice to the English Church grant them, could only be granted as the fair equivalent of the expectation of further assistance from those Bodies which the Church in Wales now enjoys and of which but for this provision that Church would be deprived by disestablishment, so that they would only be a provision against the further loss over and above that of its existing endowments which the Church in Wales would suffer upon disestablishment.

Private benefactions.

7.—(1) Any property which consists of, or is the produce of, or is or has been derived from, property given by any person out of his private resources since the year *sixteen hundred and sixty-two*, or money raised by voluntary subscriptions since that year, or voluntarily given since that year out of funds not liable under any statutory provision to be applied to ecclesiastical purposes, shall, for the purposes of this Act, be deemed to be a private benefaction.

There was a similar provision in the 1909 Bill (clause 5 (1)). The date selected in the Bill of 1895 was 1703, presumably because that was the date of the establishment of Queen Anne's Bounty. This date was, however, changed to 1662 while the Bill was under discussion.

It is believed that no reliable statistics exist as to the amount of private benefactions between the years 1662 and 1703. But it appears from the return presented by Queen Anne's Bounty and the Ecclesiastical Commissioners to the Welsh Church Commission (Appendix A. Vol. I., Part II. of the Report), that in 1906 the amount of the income of benefices derived from private benefactions since 1703 was as follows: Rents of land and house

Cl. 7 (1), note. property, £3,276; Tithe rentcharge, gross value, 1906, £4,324. Income from other sources, £12,610.

The amount of private benefactions between 1662 and 1703 is probably almost negligible, and in fact on May 11, 1909, the then Solicitor-General (Sir S. Evans), in reply to an enquiry addressed to him in the House of Commons by Mr. Joynson-Hicks, quoted the figures above given of private benefactions since 1703 as if they covered the whole period from 1662.

The words "voluntarily given since that year out of funds not liable under any statutory provision to be applied to ecclesiastical purposes" are new, and probably meet the case of a gift to a benefice of funds or property held by charitable trustees having a discretion to use their funds for purposes other than ecclesiastical, or a similar gift by such a body as a college in one of the universities.

(2) Where, in the case of any property given or money raised since the year *sixteen hundred and sixty-two*, the source from which such property or money was derived is unknown, it shall be deemed to be a private benefaction within the meaning of this Act.

Clause 5 (2) of the 1909 Bill was the same. The 1895 Bill contained no such provision.

(3) The Ecclesiastical Commissioners and Queen Anne's Bounty as respects any property transferred from them respectively, and the Welsh Commissioners as respects any other property vested in them by this Act, shall as soon as may be after the passing of this Act ascertain and by order declare what part of the property constitutes private benefactions within the meaning of this Act.

This sub-clause is the same as clause 5 (3) of the 1909 Bill.

(4) Orders of the Ecclesiastical Commissioners and Queen Anne's Bounty under this section shall be made with the concurrence of the Welsh Commissioners, and every such order of the Welsh Commissioners under this section as relates to a benefice with respect to which the Ecclesiastical Commissioners or Queen Anne's Bounty have sent to the Welsh Commissioners full particulars of any private benefaction made thereto through them, shall be made with the concurrence of the Ecclesiastical Commissioners or Queen Anne's Bounty as the case requires, and if in any case the concurrence required by this section is not given, the order shall be made with the approval of His Majesty the King in Council, given on the advice of the Judicial Committee of the Privy Council. Cl. 7 (4).

This sub-clause is the same as clause 5 (4) of the 1909 Bill.

Distribution of property by Welsh Commissioners.

8.—(1) Subject to the provisions of this Act, the Welsh Commissioners shall by order transfer the property vested in them by this Act, as follows :—

(*a*) they shall transfer to the representative body—

(i) all churches ;

(ii) all ecclesiastical residences, together with any moveable chattels held and enjoyed with or as incident to the occupation of any such residence, by the incumbent for the time being of the office to which the residence is attached ;

(iii) all funds or endowments specially allocated to the repair, restoration, or improvement of the fabric of any such church or ecclesiastical residence ;

(iv) all glebes : subject to the payment by the representative body to the Welsh Commissoners of a sum equal to the value of such part of the glebes so transferred to them as does not consist

Cl. 8 (1).

of private benefactions, such value to be determined by the Welsh Commissioners, regard being had to the tenancies, charges, incumbrances, interests, and rights subject to which the glebes are transferred to the representative body ;

(v) all private benefactions ;

(vi) if so requested by the representative body, any burial grounds which before the date of disestablishment have been closed under or in pursuance of the provisions of any Act of Parliament or of any Order in Council made thereunder ;

(*b*) of the property not so transferred to the representative body they shall transfer the burial ground of any ecclesiastical parish so as to vest the same in the existing incumbent during his incumbency and on the determination thereof—

(i) where the burial ground is situate in an area in which the Burial Acts, 1852 to 1906, are in force or in which a burial ground has been provided under the Public Health (Interments) Act, 1879, or a local Act, in the burial authority, or where the burial authority is a joint committee, in such one or more of the authorities represented on that committee, or in trustees on their behalf, as the Welsh Commissioners think fit ;

(ii) where the burial ground is situate in a rural parish, or in a part of a rural parish in which the Burial Acts, 1852 to 1906, are not in force, in the council of that parish, or, if there is no council, in the chairman of the parish meeting and overseers of that parish ; and

(iii) in any other case, in the council of the borough or urban district in which the burial ground is situate :

Cl. 8 (1), note.

The property referred to in this clause will have been transferred under clause 4 (1) to the Welsh Commissioners (subject to vested interests). But part of it, viz. churches, ecclesiastical residences, repair funds, glebes, certain burial grounds which have been closed, and "private benefactions" (defined in clause 7) will under this clause be re-transferred, so as to vest in the Representative Body of the disestablished Church to be formed under clause 13.

The expression "Church" includes cathedrals, chapels of ease, and other public chapels of the Church in Wales and in the case of a cathedral church the chapter house and cloisters and other "precincts" of the cathedral church; and the expression "ecclesiastical residence" means any parsonage house, and any house of residence of any bishop or member or officer of a cathedral corporation, and any curtilage or garden held therewith (see clause 35 (1) *post*). The latter expression includes, so far as the four Welsh dioceses are concerned, four bishops' palaces, four deaneries, four canons' residences, one minor canon's residence, one archdeacon's residence, and about eight hundred and fifty parsonages.

The life interests (as explained in clause 4 (1)) of incumbents at the passing of the Act, who continue to be incumbents on the date of disestablishment, are saved, and the property will vest in the Representative Body subject to such life interests and to all tenancies and incumbrances (such as drainage rentcharges) affecting the property, and subject also to "charges."

The cathedrals, parish churches, ecclesiastical residences, repair funds, glebes, and "private benefactions" are thus left to the disestablished Church, subject in the case of glebe to the payment by the Representative Body to the Welsh Commissioners of a sum equal to the value of such part as does not consist of private benefactions (clause 8 (1) (*a*) (iv.)). Provision is made by clause 12 for appeal to the Privy Council against any decision of the Welsh Commissioners as to what constitutes a private benefaction or as to what sum should be paid as compensation. The "glebe" dealt with in this clause does not include those portions of glebe lands acquired for benefices from grants of the Ecclesiastical Commissioners or from that portion (about two-thirds) of grants of Queen Anne's Bounty which have been made

Cl. 8 (1), note.

from English Church sources. The property so left to the disestablished Church is the only property which that Church will be able to claim as of right out of its present endowments. As has been seen in clause 6 the Ecclesiastical Commissioners and Queen Anne's Bounty are enabled, if they see fit, to supplement this provision to the extent therein mentioned.

The Bill of 1909 contained similar provisions (clause 6), with the following exception: Glebe lands wholly ancient were secularised, wholly private benefactions were to be transferred to the Representative Body, and where part only was a private benefaction, it was at the option of that body to be divided, or to be treated as wholly ancient or wholly a private benefaction, subject to compensating payments to or by the Representative Body.

The Bill of 1895 as introduced, transferred the parish churches and parsonages to the Representative Body, but did not deal specifically with repair funds and closed burial grounds, and left the cathedrals in the hands of the Welsh Commissioners, and provided that they should be repaired and maintained out of the funds (other than parochial) vested in the Welsh Commissioners, and that they might be used (though not exclusively) for the same purposes as theretofore, i.e. for the services of the Church. While the Bill was in Committee, however, Mr. Asquith expressed the willingness of the Government to allow the Church to have the cathedrals as well as the churches, but he said that in that case the Church would also have to undertake their upkeep and repair. Very large sums of money have been expended on the Welsh cathedrals during the last century for purposes other than mere repair and maintenance, e.g. restoration, enlargement, and, in the case of Llandaff, virtual rebuilding, and no provision was made in the 1895 Bill for ascertaining these sums, or for their being treated as "private benefactions" which ought to be repaid to the Representative Body.

The Irish Act left the cathedrals to the Church (sec. 25, and definition of Church, sec. 72).

The Bill of 1895, as introduced, also left the bishops' palaces, deaneries, canons' houses, &c., in the hands of the Welsh Commissioners, but allowed them to be used, on the request of the Representative Body, for ecclesiastical residences, subject to the Representative Body becoming responsible for the expenses of maintenance and repair.

Under the Irish Act (sec. 12 (2) and secs. 27, 28) the parsonages were transferred to the Commissioners subject to the life interests of the existing incumbents therein. But the Act provided for the Representative Body having a right to purchase these parsonages on advantageous terms, i.e. ten times the annual value of the site of the residence estimated as *land*; and facilities were given for the purchase of land (not exceeding ten acres), to be held with the parsonage; or in the case of a bishop's see-house the acreage of the land might be thirty acres. The Act also provided (secs. 27, 28) for the purchase of see-houses, deaneries, &c. **Cl. 8 (1), note.**

The funds or endowments referred to in sub-clause (1) (*a*) (iii) would include any repair funds held by trustees or societies like the Incorporated Church Building Society (independently of funds provided out of private resources since 1662, which would pass to the Representative Body as "private benefactions"), and they might be held to include portions of certain estates which are vested in the Chapters of Bangor and St. Asaph, and are applicable partly for the maintenance of the cathedral fabrics. Otherwise no portion of these estates would be transferred to the Representative Body.

The transfer to the Representative Body of burial grounds closed under an Act of Parliament or any Order in Council would ensure the reverent care of such grounds, but would throw the expense of their maintenance on that Body except where, under the Local Government Act, 1894 (sec. 6 (i) (*b*)), the obligations of churchwardens with respect to maintaining and repairing closed churchyards have been transferred to the parish councils and the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855.

As to other burial grounds (except they should be "private benefactions"), the effect of sub-clause (1) (*b*) is to transfer them on the determination of the existing incumbent's incumbency to the burial board, council, chairman of a parish meeting and overseers, or trustees. Under clause 23 (2) the transfer is to be "without prejudice to any existing public and private rights of burial therein." Provision is made by the same clause for the management and regulation of the churchyards and burial grounds so transferred.

The great difference between this clause and the corresponding clause of the Bill of 1909 is that the Repre-

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Cl. 8 (1), note.

sentative Body are by this clause called upon to take all glebes and to pay for that portion thereof which may be described briefly as being ancient or treated as ancient, i.e. derived from ancient endowments of benefices, from the Parliamentary Grants Fund, or from Welsh sources of the Royal Bounty Fund or annexed by the Ecclesiastical Commissioners. From the return of endowments of benefices in 1906 the revenues from glebes so acquired appear to amount to about £28,000 per annum. The Representative Body will have to find a capital sum sufficient to purchase the fee simple reversionary interest in this property expectant upon the determination of the life interests. This is obviously a very large figure, and inasmuch as the property so purchased being reversionary will not provide any immediate income while the only capital funds transferred to the Representative Body will be those of which the income will be payable to persons having existing interests therein it is difficult to see how the Representative Body is to complete the transaction.

But even if the Representative Body are able to complete this purchase the position will be extremely difficult. They will be the owners of a very large number of small plots of land scattered throughout Wales which will necessitate a large and extensive staff for management, collection of rents, etc. It seems almost cynical that those who are depriving the Church of a large part of her revenues should compel her to keep and to redeem that part of her property which is most burdensome at the very time when many who are now supporting Disestablishment are hoping at no very distant date to see land nationalisation become a reality.

The Irish Act (sec. 26) left to the Church all burial grounds annexed or adjacent to churches, and where this was not the case transferred them to the guardians, with carefully-worded restrictions so as to preserve to Church-people as full a right to use them, and for the same purposes, as they possessed before, and also so as to provide for their decent maintenance and proper management.

(*c*) of the property not so transferred to the representative body they shall transfer any tithe rentcharge which was formerly appropriated to the use of any parochial benefice to the council of the county in which the land out of which the tithe rentcharge issues is situate :

Subject to provision for vested interests the county councils will make schemes for the application of tithe rentcharge under clause 18. Cl. 8 (1), note.

Provided that where such land is not situate in Wales or Monmouthshire they shall transfer the tithe rentcharge to the council of such county in Wales and Monmouthshire as the Welsh Commissioners think fit.

It will be observed that tithe rentcharge arising out of English land, which tithe rentcharge happens to belong to a Welsh benefice will, if the Bill passes, become applicable to secular purposes connected with Wales. See further provisions as to tithe rentcharge, clause 15

(*d*) of the property not so transferred to the Representative Body they shall transfer any other property which was formerly appropriated to the use of any parochial benefice (including the money paid under this section by the Representative Body in respect of glebes) to the council of the county in which the ecclesiastical parish to the use of which the property was so appropriated is situate : Provided that if such ecclesiastical parish is situate in more than one county the property shall be transferred to such one or more of those councils or be divided between them as the Welsh Commissioners may think fit ;

The property transferred under (*d*) to the County Councils is, under clause 18 (1) (*a*) to be applied to "any charitable eleemosynary or public purpose of local or general utility."

Parochial tithe rentcharge, it will be observed, goes to the County Council of the county in which the tithe rentcharge arises : other parochial property goes to the County Council of the County in which the benefice is situate to which it formerly belonged without regard to the local situation of the property.

Cl. 8 (1), note.

(*c*) they shall transfer all other property vested in them to the University of Wales.

The property which will ultimately pass to the University of Wales will consist mainly of the Welsh property of the Ecclesiastical Commissioners. As to the mode in which such property is to be applied, see clause 18 (1) (*b*).

Under the Bill of 1909 the property referred to in (*d*) and (*c*) was to be transferred ultimately to the "Council of Wales"—a body set up by clause 11 of that Bill to take over the functions of and the property vested in the Welsh Commissioners on the dissolution of that body.

There is no proposal for the creation of any such body in the present Bill, nor was there in the Bill of 1895. The latter Bill contemplated apparently the permanent existence of the Welsh Commissioners, but now it is proposed that they shall continue for a possible period of six years only (see clause 10 (7)).

The Council of Wales disappears because the Bill makes provision for the immediate appropriation to specific purposes of the property secularised other than that which goes to County Councils.

(2) Save as otherwise provided by this Act, all property transferred under this section shall be held subject to all existing public and private rights with respect thereto, and all tenancies, charges, and incumbrances which may at the date of transfer be subsisting therein, and in the case of all such property, except tithe rentcharge transferred to a County Council, to the existing interests of all persons who at the *passing of this Act* hold ecclesiastical offices in the Church in Wales, and in the case of such tithe rentcharge to the obligation to make such provision as is hereinafter mentioned in lieu of such existing interests.

This sub-clause corresponds to clause 6 (2) in the 1909 Bill. As to public and private rights of burial, see clause 23, as to the liability of lay impropriators for the repair of chancels see clause 27, as to rights of marriage see clause 22, and as to tithe rentcharge see clause 14.

It is difficult to perceive the precise limits of this clause. For instance, as to the parish church. Are the rights of the parishioners to attend service, to be seated, to have service read on Sunday, to attend Communion, to have their children baptized, etc. preserved? Cl. 8 (2), note.

(3) Where property of any such class as aforesaid has before the date of disestablishment been sold, redeemed, or otherwise converted, or where any moneys are at that date held upon trust to be applied in the building, purchase or repair of, or to make good dilapidations in, property of any such class as aforesaid, the proceeds of sale, redemption, or other conversion, and such moneys as aforesaid, or the securities in which such proceeds or moneys are for the time being invested, shall be dealt with in like manner as if they were property of that class.

Provided that this sub-section shall not apply to money (not being a private benefaction) which is the proceeds of sale or is held on trust to be applied in the purchase of glebe or to the securities in which any such money is for the time being invested.

There was a similar sub-clause in the Bill of 1909, but not in the Bill of 1895. Its effect would seem to be that where, for example, a parsonage has been sold and no new house provided or dilapidation moneys in respect of a parsonage have been duly paid (in each of which cases the proceeds would be in the hands of Queen Anne's Bounty, and would have become vested in the Welsh Commissioners under clause 4 (1) and clause 5 (2)), the moneys are to be dealt with in the same manner as the property they represent would be dealt with, i.e., the proceeds of the sale of a parsonage would be transferred to the Representative Body, and the dilapidation moneys would also go to that Body as if property of the same class as parsonage houses.

Dilapidation moneys in respect of glebe buildings (other than parsonages) would go to the Representative

Cl. 8 (3), note.

Body, but if the buildings were on ancient glebe, that Body would have to pay such moneys back to the Welsh Commissioners under clause 8 (1) (*a*) (iv.).

Similarly as to the proceeds of glebe lands in the hands of the Ecclesiastical Commissioners (whether proceeds of sale or accumulated royalties received under mineral leases), if the glebe lands were "private benefactions" such proceeds would go to the Representative Body without any liability for repayment to the Welsh Commissioners.

The proviso at the end of clause 8 appears to be intended to avoid the necessity of a double transfer of Stock representing the proceeds of sale of ancient glebe. In the absence of such proviso this stock would, under clause 4 (1) pass to the Welsh Commissioners as from the date of disestablishment, and would then, under clause 8 (1) (*a*) (iv) be transferred as glebe to the Representative Body, subject to the repayment of its value to the Welsh Commissioners.

Border Parishes.

Provisions as to border parishes.

9.—(1) The Welsh Commissioners shall, as soon as may be after the *passing of this Act*, with respect to any ecclesiastical parish part only whereof is situate in Wales or Monmouthshire, by order determine with reference to the general wishes of the parishioners whether the parish is to be treated as being wholly within or wholly without Wales or Monmouthshire, and the parish shall for the purposes of this Act be treated accordingly, but any parishioner of the parish may appeal against any such order to His Majesty the King in Council, and any such appeal shall be referred to the Judicial Committee of the Privy Council.

(2) The Ecclesiastical Commissioners shall by order attach to an English diocese any ecclesiastical parish which at the *passing of this Act* is situate in a Welsh diocese, but not in Wales or Monmouthshire, and any such ecclesiastical parish which under this section is to be treated as being wholly without Wales or Monmouth-

shire, and may make any provisions which appear to them necessary or incidental to such attachment, including the transfer to the bishop of the diocese to which the parish is attached of the right of patronage in any case where such right was immediately before the *passing of this Act* vested in any cathedral or ecclesiastical corporation dissolved by this Act, but no such order shall come into effect until the date of disestablishment. Cl. 9.

(3) Any ecclesiastical parish which is at the *passing of this Act* situate wholly in Wales or Monmouthshire, or is for the purposes of this Act to be treated as so situate, and forms part of an English diocese shall, as from the date of disestablishment cease to form part of that diocese, and shall be attached to such Welsh diocese as the Representative Body may determine.

(4) Save as by this section provided, nothing in this Act shall affect any English diocese.

This corresponds to clause 26 of the Bill of 1909 and 31 of the Bill of 1895. The necessity for making these provisions affords a further illustration of the unity of the Church in England and Wales.

There were in 1906 eighteen parishes as to which the Welsh Commissioners will have to decide, under sub-clause 1, whether they are to be regarded as English or Welsh parishes. Of these thirteen are now in English dioceses and five in Welsh.

Of the thirteen those that the Commissioners decide are to be regarded as in English dioceses will of course remain as at present; but should the Commissioners decide to regard any of the five as English parishes, it will be necessary for the Ecclesiastical Commissioners to attach them to English dioceses under sub-clause 2.

There are fourteen parishes of Welsh dioceses geographically outside Wales and Monmouthshire and therefore outside the area of disestablishment, and these will also under sub-clause 2 have to be attached by the Ecclesiastical Commissioners to English dioceses. The patronage of five of these benefices is at present vested

Cl. 9, note. in corporations dissolved by the Bill, and will under sub-clause 2 be transferred to the bishops of the dioceses to which they may be attached.

On the other hand there are twelve parishes now in English dioceses which, being within the area of disestablishment, will, together with so many of the thirteen English border parishes as the Commissioners decide are to be regarded as Welsh, be taken from their dioceses and come within the scope of the disestablishment and disendowment scheme.

In both the former Bills the destination of the border parishes was to be decided by the commissioners with reference to the population, the situation of the Church and the other circumstances of the case. Now by a sort of local option it is to be decided with reference to the general wishes of the parishioners, though no direction is contained as to how these wishes are to be ascertained.

Part II.

Welsh Commissioners and Representative Body.

Welsh Commissioners.

Appointment of Commissioners.

10.—(1) The following persons (that is to say)—

shall be Commissioners under this Act. If any vacancy among them occurs by death, resignation, incapacity, or otherwise, His Majesty may, by warrant under His sign manual, appoint some fit person to fill the vacancy.

(2) The said Commissioners (in this Act referred to as the Welsh Commissioners) shall be a body corporate, styled "The Commissioners of Church Temporalities in Wales," with a common seal, and power to hold land for the purposes of this Act without licence in mortmain.

(3) The Welsh Commissioners may act by any one of their body and notwithstanding any vacancy in their number, but if any person aggrieved by an order of one Commissioner so requires, the order shall be reconsidered on rehearing by the three Commissioners. Cl. 10.

(4) There shall be paid to one of the Welsh Commissioners such salary, not exceeding *fifteen hundred pounds* a year, and to one other of the Commissioners such salary, not exceeding *one thousand pounds* a year, as the Treasury may direct.

(5) The Welsh Commissioners may, with the consent of a Secretary of State, and the consent of the Treasury as to number and remuneration, appoint or employ and remove a secretary, and such other officers and persons, and with such remuneration, as appears necessary for enabling the Commissioners to carry this Act into effect.

(6) The said salaries and remuneration and all incidental expenses sanctioned by the Treasury of carrying this Act into effect shall be paid by the Commissioners out of moneys in their hands in pursuance of this Act, but not so as in any way to diminish the property to be transferred to the representative body or County Councils under this Act.

(7) The powers of the Commissioners shall continue until the end of *the year* in which this Act is passed and for three years thereafter, and no longer, and the Commissioners shall then be dissolved ; but it shall be lawful for His Majesty from time to time with the advice of His Privy Council, on the application of the Commissioners, to suspend the dissolution of the Commissioners and, subject to revision by the Treasury of the salaries of the Commissioners and the remuneration and number of their officers, to continue their powers for such time, not

Cl. 10 (7). exceeding in the aggregate two years, as His Majesty thinks fit.

(8) A paid Commissioner and an officer or other person employed by the Commissioners shall not during his continuance in office be capable of being elected to or sitting as a member of the House of Commons.

With the exception of sub-clauses 6 & 7 this clause reproduces clause 8 of the Bill of 1909 and clause 10 of the Bill of 1895. To sub-clause (6) has been added a proviso that the property to be transferred to the representative body or county councils is not to be diminished by the payment of any portion of the expenses of the Welsh Commissioners in carrying out the provisions of the Bill. Such expenses will be borne therefore by the property which will ultimately pass to the University of Wales. While provision is made for the expenses of the Welsh Commissioners there is none for the expenses which will necessarily be incurred by the Ecclesiastical Commissioners and Queen Anne's Bounty in carrying out the very troublesome investigations and arduous duties which will be thrown upon them if the Bill becomes law. They are apparently to have the privilege of themselves defraying the expenses to which they will be put in making the compulsory surrender of their property and funds.

The sub-clause in the Bill of 1909 corresponding to sub-clause (7) in this Bill provided for the indefinite existence of the Welsh Commissioners, but the present Bill gives that body a possible maximum life of six years only.

During the discussions on the Bill of 1895 the names of the three Welsh Commissioners were announced. They were the Right Hon. Sir Algernon West, late Chairman of the Board of Inland Revenue (unpaid), the Hon. William Napier Bruce, an assistant Charity Commissioner, and Col. Hugh Robert Hughes, of Ystrad, Denbighshire. It is to be observed that neither the Commissioners appointed by the present Bill nor their successors need be Churchmen. The latter must be "fit persons." The Chairman is to receive a maximum salary of £1,500 per annum, and one of the Commissioners is to receive a maximum salary of £1,000 per annum.

The third Commissioner will be honorary. Paid Commissioners are not to be members of the House of Commons. Cl. 10, note.

The three gentlemen appointed Commissioners by the Irish Act (secs. 3, 4, 5, 6, 9) were all Churchmen. Their successors were required to be members of the Church of England or of Ireland or of the United Church. Each Commissioner was to receive £2,000 per annum for a maximum period of ten years. He was disqualified from sitting in the House of Commons.

The duties of the Commissioners under the Bill are of the most responsible and important kind, and very much must depend upon the selection to be made by the Government.

Powers and procedure of Commissioners.

11.—(1) Subject to such appeal as is hereinafter mentioned, the Welsh Commissioners shall have full power to decide all questions, whether of law or of fact, which it may be necessary to decide for the purposes of this Act, and shall not be subject to be restrained in the due execution of their powers under this Act by the order of any court, nor shall any proceedings before them be removed by certiorari into any court.

(2) The Welsh Commissioners with respect to—

(*a*) enforcing the attendance of witnesses, after a tender of their expenses, the examination of witnesses, and the production of deeds, books, papers, and documents;

(*b*) issuing any commission for the examination of witnesses;

(*c*) punishing persons refusing to give evidence or to produce documents, or guilty of contempt in the presence of the Commissioners or any of them sitting in open court; and

(*d*) making or enforcing any order made by them for carrying into effect this Act;

shall have all such powers, rights, and privileges as are vested in the High Court for such or the like purposes,

Cl. 11 (2). and all proceedings before the Commissioners shall in law be judicial proceedings before a court of record.

(3) The Welsh Commissioners may review and rescind or vary any order or decision previously made by them or any of them; but save as aforesaid, and as by this Act provided, every order or decision of the Welsh Commissioners shall be final.

(4) They shall make general rules for regulating their procedure under this Act, and generally for securing the due execution of their powers, and giving effect to this Act. All such general rules shall be submitted to His Majesty the King in Council for confirmation, and when so confirmed, with or without modifications, shall be laid before both Houses of Parliament, and shall have effect as if enacted by this Act.

(5) They shall in each year make a report to the Secretary of State of their proceedings under this Act, and this report shall be laid before Parliament.

This clause reproduces clause 9 of the Bill of 1909 and clause 11 of the 1895 Bill.

The Irish Act (secs. 7 and 8) is in similar terms, except that sub-clause (5) above does not seem to have had any counterpart in the Irish Act.

Appeal to the King in Council.

12.—(1) An appeal shall lie to His Majesty the King in Council against any decision of the Welsh Commissioners with respect to any question as to what constitutes a private benefaction, or as to what sum should be paid under this Act as compensation, by way of annuity or otherwise, to any person, or as to what sum should be paid to any person in substitution for and in satisfaction of his interest in any tithe rent-charge, or as to the value of any glebe, or any interest therein, and any such appeal shall be referred to the Judicial Committee of the Privy Council.

(2) Any appeal referred to the Judicial Committee under this Act shall be heard and dealt with in like manner as if it were an appeal from a Court from which an appeal lies to His Majesty in Council, and the Judicial Committee shall have the same power with respect to the costs of the parties and otherwise as they have with respect to any such appeal. Cl. 12.

Sub-clause (1) reproduces in effect clause 10 of the Bill of 1909 and 12 of the Bill of 1895, except that it is expressed in more particular terms.

The Irish Act (sec. 42) allowed a person aggrieved at the amount of compensation allowed to refer the question to arbitration. Under the Irish Act no question could arise as to what constituted a private benefaction, because a lump sum (£500,000) was given in full discharge of all private benefactions.

Constitution of Representative Body.

Power to hold synods and constitute representative body.

13.—(1) Nothing in any Act, law, or custom shall prevent the bishops, clergy, and laity of the Church in Wales from holding synods or electing representatives thereto, or from framing, either by themselves or by their representatives elected in such manner as they think fit, constitutions and regulations for the general management and good government of the Church in Wales and the property and affairs thereof, whether as a whole or according to dioceses, and the future representation of members thereof in a general synod or in diocesan synods, or otherwise.

See clause (3) and notes.

The object of this sub-clause is to repeal the prohibition contained in 25 Henry VIII. c. 19 against holding synods.

It is to be observed that nothing is laid down as to

Cl. 13 (1), note.

how the bishops, clergy and laity are to initiate action under this clause. May the bishops summon whom they please to their synods? Are unbeneficed as well as beneficed clergy to have votes? What constitutes a layman of the Church in Wales, and what share is he to have in framing the new constitution and regulations? May each diocese have a different constitution and if not, how is agreement to be secured? These represent the kind of questions which are likely to arise after disestablishment, and it would seem that no provision is made for answering them.

The Home Secretary in the House of Commons on May 9 (*Debates*, vol. 38, No. 58, 563) in answer to a question by Mr. Ormsby-Gore seemed to suggest that every "layman" in Wales will be entitled to take part in the first election of representatives. He referred to the Irish Act as a parallel, but it is to be noted that sec. 22 of that Act, which corresponds to sub-clause (2) of this clause, provides for the election of representatives by the "bishops, clergy and laity of the Church in Ireland or the persons who for the time being may succeed to the exercise and discharge of the episcopal functions of such bishops and the clergy and laity *in communion with* such persons."

On a later day however Mr. McKenna offered if it was desired to insert in the Bill provisions defining the constitution of the first Synod.

The Bill of 1909 (clause 13 (1)) and the Bill of 1895 (clause 15 (1)) and also the Irish Act (sec. 19) contain similar provisions.

In clause 3 the expression "constitution and regulations" is used. Probably the use of the plural—"constitutions"—in this clause is an oversight.

(2) If at any time it is shown to the satisfaction of His Majesty the King that the said bishops, clergy, and laity have appointed any persons so to represent them, and hold property for any of their uses and purposes, His Majesty in Council may by charter incorporate such persons (in this Act referred to as the Representative Body), with power to hold land without licence in mortmain.

This sub-clause enables the King to create the "Representative Body" of the disestablished Church, and to incorporate it. Cl. 13 (2), note.

It may be created before or after the date of disestablishment.

The Bill of 1909 (clause 13 (2)) and the Bill of 1895 (clause 15 (2)) and also the Irish Act (sec. 22) contain similar provisions.

Part III.

Existing Interests: Compensation: Application of Residue.

Provisions as to existing Interests, and Compensation therefor.

Provisions as to existing interests.

14.—(1) Any person who at the date of the *passing of this Act* holds an ecclesiastical office affected by this Act by freehold tenure or by any tenure which, in the opinion of the Welsh Commissioners, is equal to freehold tenure shall retain his existing interest in the emoluments of that office so long as he holds that office or any other ecclesiastical office in the Church in Wales to which he may be nominated or appointed after the *passing of this Act*, whether before or after the date of disestablishment:

Provided that where any such person is nominated or appointed to any ecclesiastical office in the Church in Wales, other than that which he held at the passing of this Act—

(*a*) he shall (save as otherwise expressly provided by this Act) pay over the net income of the ecclesiastical office held by him at the passing of this Act to the Representative Body;

(*b*) he shall cease to have any existing interest in any burial ground or any ecclesiastical residence attached to the office he held at the passing of the Act.

Cl. 14 (1), note.

Ecclesiastical Office is defined by clause 35 (1) as any "bishopric, ecclesiastical dignity, or preferment within the meaning of the Church Discipline Act, 1840, and includes any lay office in connection therewith, or in connection with any cathedral corporation." Clause 14 (1) as drafted would include lay officers, but holders of lay offices in the Church in Wales who may be deprived of any emoluments by the operation of the Bill are provided for by clause 17. Clause 14 therefore is probably intended to apply only to "ecclesiastical persons" as defined in clause 35 (1) as bishops or the holders of any ecclesiastical offices who are in holy orders.

The qualification of holding an Ecclesiastical Office "by freehold tenure or by any tenure which in the opinion of the Welsh Commissioners is equal to freehold tenure" would probably exclude the holders of assistant Curacies from these provisions as to existing interests and compensation.

The effect of this clause is that an incumbent, holding a benefice in Wales at the date of the passing of the Act will retain his interest in the emoluments of the office which he so holds (but not in the residence house or burial ground) so long as he remains in the service of the Church in Wales even though he be moved to another office, but after such removal (or any number of removals) while he will retain his existing interest in the benefice which he held at the date of the passing of the Act, he will retain that interest for the benefit of the Representative Body to whom he will have to pay over the net income from whatever source he has received it. If he leaves the service of the Church in Wales and takes an Ecclesiastical Office in England his existing interest will come to an end whether for his own benefit or for the benefit of the Representative Body. As glebe during the continuance of a vested interest remains vested in the incumbent having that interest, the curious result follows that a clergyman who at the date of the passing of the Act held benefice A to which glebe was attached will, after moving it may be from North to South Wales into Parish B continue to be the legal owner of the glebe of benefice A, and have all the rights and duties attaching to such ownership including the right with the consent of the Representative Body (see clause 25) to sell or lease the property.

The provisions of the 1909 Bill as to existing interests were entirely different. Under that Bill an existing interest would have continued so long only as the holder of an office remained in the office which he held at the date of the passing of the Act subject to the provision that if he vacated that office by retirement within five years he would receive a compensation annuity varying according to his age, and payable by the bodies amongst whom the endowments of the benefice would have been distributed. Cl. 14 (1), note.

(2) On such a person as aforesaid ceasing for six months to hold any ecclesiastical office in the Church in Wales such existing interest as aforesaid shall determine :

Provided that if he resigned the office which he last held with the consent of the representative body on the ground that he was incapacitated by permanent mental or bodily infirmity for the performance of his duties, he shall be entitled to receive during the remainder of his life an annuity equal to one-third of the average net income of the office which he held at the passing of this Act (exclusive of the annual value of the ecclesiastical residence, if any, attached to the office), during the seven years immediately preceding the date of his resignation, and such annuity shall be charged on the property out of which the emoluments of that office were payable, and shall be payable by the body or authority in which such property is vested, or if such property is vested in more than one body or authority, by those bodies or authorities in proportion to the value of the parts of the property vested in them respectively.

(3) If any question arises under this section as to whether a person has been so incapacitated as aforesaid, or as to the amount of the annuity payable to him, or as to the bodies or authorities by whom such annuity is payable, or the proportions they are liable to contribute thereto, or as to the amount to be paid over under this

Cl. 14 (3). section as the net income of any ecclesiastical office, the question shall be determined by arbitration.

(4) For the purposes of this section "net income" shall have the same meaning as the expression "annual value of a benefice" has in the Incumbents' Resignation Act, 1871.

This sub-clause is new. It is an attempt to keep alive in Wales during the continuance of existing interests the benefits of the Incumbents' Resignation Acts notwithstanding the general repeal of ecclesiastical laws in clause 1.

As drafted the sub-clause would apply not only to bishops, deans, incumbents, &c., but also to holders of lay offices, e.g. chancellors. At present bishops' pensions are dealt with by a separate Act (32 & 33 Vic. c. 111) and there is no statutory provision for pensions for lay officers.

While the clause affects to give a claim to a pension of "one-third of the average net income of the office" being the pension which may be granted under the Incumbents' Resignation Acts to an incumbent of a benefice incapacitated by infirmity it makes this pension payable by the body or authority in which is vested "the property out of which the emoluments of the office were payable" and charges it on such property. Consequently where the property is very small or where there is no property the one-third pension will be but ill secured if secured at all. This will apparently be the case where the income of the benefice is wholly or largely derived from voluntary sources and pew rents.

(5) Where the emoluments of any ecclesiastical office in the Church in Wales do not consist of an interest in any specific property, but consist of a right to receive a fixed annual sum then—

(*a*) If that sum was before the date of disestablishment payable directly or indirectly out of the common fund of the Ecclesiastical Commissioners, such right shall be deemed to be an existing interest in the property on which the

payment of such annual sum is charged by this Act ; and Cl. 14 (5).

(*b*) If that sum was before that date payable otherwise than out of such fund as aforesaid, and the property out of which it was paid is by virtue of this Act vested in the Welsh Commissioners, such right shall be deemed to be an existing interest in that property.

(6) The dissolution by this Act of a corporation aggregate shall not affect the rights of any existing member of that corporation in the emoluments to which as a member of the corporation he was at the passing of this Act entitled.

Sub-clause (5) (*a*) and (*b*) contains provisions necessary for the protection of vested interests in the peculiar species of endowments consisting of charges upon ecclesiastical property and to prevent the loss of such interests by the destruction of the charges by merger in the property upon which they are charged when the charges and the property come to be held by the same bodies ; in effect the existing interest in the charge is re-established as a charge upon (i.e. an interest in) the property which bore it.

Sub-clause (6) is necessary to preserve the existing interests of members of corporations aggregate (e.g. deans and chapters) who are entitled not to separate properties but to a share of the corporate revenues. Each will continue during the continuance of his existing interest to be entitled to the same share as formerly of the revenues which will have passed from the dissolved corporations into other hands.

The provisions of the Irish Act (secs. 23, 51) were different. It has been already explained (*supra*, clause 3) that under the Irish Act a clergyman did not retain a life interest in the actual emoluments of his benefice, but received instead from the Commissioners an annuity of equal amount. The Commissioners were empowered (1) to commute the value of any such annuity or life interest, at the request of the person entitled and with the

Cl. 14 (6), note.

consent of the Representative Body, and (2) to pay over the capital sum thus ascertained to the Representative Body charged with the payment of the annuity, so long as the annuitant required such payment to be made; (3) and if three-quarters of the whole number of ecclesiastical persons in any diocese agreed to commute their life interests in this manner, then to pay in addition a bonus of 12 per cent. on the capital value of the commuted annuities to the Representative Body, such addition to be disposed of for Church purposes. It in fact helped to provide a re-endowment fund for the Church.

The provisions of the Irish Act as to curates were as follows. By sec. 15 the Commissioners were directed to divide curates into two classes: (1) Those who though not technically beneficed or entitled to a life interest in their office ought fairly to be considered as "permanent curates," i.e. as having substantially a permanent position. The length of service, the duties to be performed, the non-residence or infirmity of the incumbent, and his habit of employing a curate were to be taken into account.

Such curates, i.e. those who were in the opinion of the Commissioners permanent curates, were to receive an annuity equivalent to the previous yearly income of their curacy. This annuity was to continue as long as the recipient was engaged in the performance of spiritual duties in Ireland (thus providing for his transfer to another post in the Irish Church) and during incapacity from age, sickness, or permanent infirmity.

The remaining body of curates who were not entitled to be considered as "permanent curates," and who were serving as curates at any time between January 1, 1869, and January 1, 1871, were to receive a gratuity. The amount of the gratuity was not to be more than £25 for each year of service, and was not to exceed £600 in all; but the Commissioners might in any case make it up to a sum of £200. It is obvious that such a gratuity might often afford invaluable aid in enabling a curate who found himself turned adrift by disestablishment to support himself and his family during the period which must necessarily elapse before a fresh employment could be obtained.

The drawback of the curate compensation clauses of the Irish Act was that they admitted of the abuse of men

becoming curates even after the passing of the Act in order to receive compensation. This defect could be remedied by naming a date after which a curate ordained or entering employment as a Welsh curate should not be entitled to compensation. But in any case, this difficulty seems an entirely inadequate reason for inflicting a great and cruel injustice on a class of men who certainly can little afford to suffer pecuniary loss. Cl. 14 (6), note.

Provisions as to tithe rentcharge.

15.—(1) There shall be paid to each person who has any existing interest in any tithe rentcharge transferred to a County Council under this Act, in substitution for and in satisfaction of that interest, and so long as that interest would otherwise have continued, the annual amount, according to the septennial average, of that tithe rentcharge, after deducting such sum as may be allowed by the Welsh Commissioners for cost of collection, rates, and other outgoings.

(2) The amount so payable shall be paid by the County Council to the Representative Body upon trust to pay over the same to the person who had such an existing interest as aforesaid, and the amount so payable by the County Council shall be a debt from the Council to the Representative Body, and a charge on the County Fund.

"*Has* any existing interest"—existing interests in tithe rentcharge transferred to a County Council are *not* saved (clause (8) (2)) and an incumbent can only have a right to provision in lieu of an existing interest in such tithe rentcharge.

Clause 4 (1) vests in the Welsh Commissioners the tithe rentcharge of parochial benefices except such part as may have been acquired out of grants of capital sums by the Ecclesiastical Commissioners or out of that portion of grants out of the Royal Bounty Fund which has been derived from English sources. The Welsh Commissioners are then directed by clause 8 (1) (*a*) (3) to transfer such part of the parochial tithe rentcharge so vested in them as has been acquired by private benefaction to the

Cl. 15 (2), note.

Representative Body and by clause 8 (1) (*c*) to transfer the residue to the Council of the County where it arises, and if it arises outside Wales, to the Council of such County in Wales as the Welsh Commissioners think fit. If apportionment of a tithe rentcharge is necessary for the purpose of making this distribution it may be made under clause 33 (1). The Bill of 1909 provided that where tithe rentcharge was divisible between the Representative Body and a County Council the whole tithe rentcharge should be paid to the County Council subject to the payment of compensation to the Representative Body for such part as was "private benefaction" (clause 5 (6).)

The effect of sub-clauses (1) and (2) seems to be that a person who is an incumbent at the passing of the Act, and holds an Ecclesiastical Office in the Church in Wales on the date of disestablishment, will as long as he continues to hold such office, instead of receiving that portion of any tithe rentcharge of his benefice which goes to the County Council, receive from the County Council but by payment through the Representative Body, an equivalent income varying as does tithe rentcharge after deducting the sum allowed for cost of collection, rates, etc.

If any part of the tithe rentcharge was a private benefaction, it will have been transferred to the Representative Body, subject to the existing interest of the incumbent, who will continue to collect such tithe rentcharge as long as he retains his existing interest.

Any part of the tithe rentcharge which has been acquired out of grants of capital sums by the Ecclesiastical Commissioners or out of that portion of grants out of the Royal Bounty Fund which has been derived from English sources, will have become vested in the Ecclesiastical Commissioners and Queen Anne's Bounty respectively (clause 5 (3)) with power to transfer it to the Representative Body (clause 6 (*c*)) subject to the payment by the Representative Body of such sums as may be required for preserving existing interests. In respect therefore of this part of his tithe rentcharge, the incumbent will receive an equivalent net income from the Representative Body.

The Bill of 1895 contained provisions similar to those of the Bill of 1909 as to tithe rentcharge, while the Irish

Act (sec. 12) transferred the tithe as from the date of disestablishment to the Commissioners under that Act. Cl. 15 (2), note.

(3) A County Council and the Representative Body shall as respects any tithe rentcharge transferred to them under this Act which was previously attached to a benefice, be deemed to be the owner of tithe rentcharge attached to a benefice, for the purposes of the Tithe Rentcharge Rates Act, 1899, so long as the holder of the benefice continues to be entitled to the emoluments of the benefice, but no longer.

The Tithe Rentcharge (Rates) Act, 1899, exempts the owner of tithe rentcharge attached to a benefice from one-half of the same rates as are mentioned in the Agricultural Rates Act, 1896 (except such of those rates as the owner of tithe rentcharge only pays in the proportion of one-half or less as compared with the occupier of buildings).

These two Acts have been continued from time to time by Continuance Acts, the last occasion being in 1911, when their operation was continued until 1913.

This sub-clause is necessary to ensure that after the passing of the Act the net amount received by an existing incumbent during his incumbency in substitution for any tithe rentcharge shall not be less on account of the tithe rentcharge being no longer attached to a benefice; after the incumbent's interest has expired this relief is withdrawn: it is not continued during the continuance of a pension to a retired incumbent so that the one-third pension annuity, when it is given in respect of tithe rentcharge, will in fact be greater than one-third of the amount receivable by the Body to whom the tithe rentcharge is transferred.

(4) Nothing in this section shall be construed as relieving the holder of any Ecclesiastical Office in the Church in Wales of any liability to repair any ecclesiastical building to which as the owner of tithe rentcharge he was subject immediately before the passing of this Act.

Cl. 15 (4) note.

This provision is new.

So long as the existing interest of an incumbent continues, he either receives the tithe rentcharge or the whole annual value thereof and he remains liable (if he was formerly liable) for the repair of the chancel.

County Councils will not be liable for the repair of chancels either during the continuance of existing interests or after the cessation thereof, although they may hold tithe which has hitherto been charged with this liability (clause 27 (1)).

The position and rights of lay impropriators of tithe in Wales are not affected by the Bill. See clause 27 and notes.

Compensation to lay patrons.

16. The Welsh Commissioners, if application is made to them within *six months after the passing of this Act* by or on behalf of any person who or whose predecessor in title was at that date entitled to any right of patronage of any benefice affected by this Act, shall, at the expiration of two years from the date of disestablishment, or, if a vacancy in that benefice occurs after the date of disestablishment but before the expiration of that period, on the occurrence of the vacancy, pay in compensation for the extinction of that right such an amount as the Welsh Commissioners may think just, so however that the total amount paid by way of compensation in respect of any benefice shall not exceed *one year's* emoluments of the benefice taken on an average of the *three years* immediately before the passing of this Act :

Provided that—

(1) His Majesty shall not, nor shall any corporation, sole or aggregate, dissolved by this Act, nor shall any trustees, officers, or other persons acting in a public capacity, be entitled to any payment under this section for or in respect of any right of patronage ; and

(2) Where any person would, but for the provisions of the statutes affecting Roman Catholics in reference to conformity to the established Church, have had at the *passing of this Act* any such right of patronage he or his successors in title shall be entitled to compensation therefor in the same manner as if it had been then actually vested in him ; and

(3) A trustee or other person occupying a fiduciary position shall not be bound to make an application under this section ; and

(4) The compensation paid under this section shall be paid out of or charged on the property vested in the Welsh Commissioners under this Act, other than burial grounds and the property to be transferred to the Representative Body, in such manner that the burden thereof may be distributed amongst the University of Wales and the several County Councils in proportion to the value of the property transferred to them respectively.

This clause corresponds to clause 16 of the Bill of 1909 and clause 18 of the Bill of 1895. The words "or whose predecessor in title," providing for the case of a change of patron between the passing of the Act and the date of the application to the Welsh Commissioners appeared first in the 1909 Bill. Two years is now to be the maximum time that a patron will have to wait for his compensation ; under the 1909 Bill he had to wait for five years and under the Bill of 1895 until the next vacancy ; and no interest is allowed by the present Bill or the Bill of 1909 on the amount of the compensation for the period between the date of the vacancy or the end of the two or five years as the case may be and the date of the payment of such compensation.

It is perhaps worth remarking that the Irish Act was prefaced by a statement that Her Majesty had been

Cl. 16, note. graciously pleased to place her interests in Irish patronage at the disposition of Parliament. The present Bill contains no such statement.

As regards private patrons the clause does not clearly provide for cases in which two or more persons have rights of patronage in respect of the same benefice. No principle is stated for the mode of dividing the compensation among the persons interested. The compensation must be claimed within six months after the passing of the Act, but will not become payable until two years after disestablishment, or the vacancy of the benefice if occurring before the expiration of two years.

The amount of compensation is very small. Under the Irish Act (sec. 18), the Commissioners were to ascertain (on application to be made within three years of the passing of the Act), the compensation which ought to be paid to any person having rights of patronage affected by the Act, and such compensation (being, it is conceived, the market value of the rights of patronage apart from disestablishment) was payable immediately. The Irish Act (sec. 6, sub-sec. 4) contained a general proviso for payment, in addition to any compensation under the Act, of the reasonable costs of making good the claim. The present Bill contains no corresponding clause.

Under sec. 42 of the Irish Act any person aggrieved at the value set upon his right of patronage might have the question referred to arbitration. Under the Welsh Bill the patron's remedy is by appeal to the Judicial Committee (clause 12 (1) *supra*) who will, however, be bound by the one-year limit of compensation imposed by this clause. It appears doubtful whether the Simeon Trust and similar patronage trusts are included in the terms "trustees or persons action in a public capacity." The patronage of several of these trusts is treated by the Ecclesiastical Commissioners as public patronage, and it would seem, therefore, that under the first proviso of this clause they may not be able to claim compensation in respect of their Welsh patronage. In some cases advow-

sons have been purchased for large sums by persons still living, for the purpose of handing them over to trustees.* **Cl. 16, note.**

The expression "one year's emoluments . . . taken on an average of three years" is vague. It is probably intended to mean one year's *net* income of the benefice, and if that is so, the method of computing the net income should be clearly defined. The definition contained in clause 14 (4) applies only to that clause.

The patronage of Roman Catholic patrons is exercised by the University of Oxford in the case of benefices in one half of England and Wales, and by the University of Cambridge in the case of benefices in the other half (3 Jas. I. c. 5; 1 W. & M. sess. I. c. 26; 12 Ann. St. 2, c. 14; 11 Geo. II. c. 17, sec. 5), but any compensation under this clause is to be paid to the Roman Catholic patron or his successors in title, who would in fact be the person to receive any consideration on a sale of the patronage.

The effect of sub-clause 3 is to free a trustee from any liability for failing to make an application for compensation, i.e. he will not be committing a breach of trust by so failing.

Compensation to lay holders of freehold offices.

17. If the Welsh Commissioners find that any person who at the *passing of this Act* holds any lay office in the Church in Wales by freehold tenure or by any tenure which in the opinion of the Commissioners, is equal to freehold tenure, is deprived of any emoluments by the operation of this Act, they may pay to that person out of moneys in their hands in pursuance of this Act, such sum by way of compensation, either by means of a single payment or of the purchase of a life annuity, as they may, with the consent of the Treasury, determine:

* Under the Lord Chancellor's Augmentation Act (20 & 27 Vict. Cap. 20), the advowsons of six livings in Wales or Monmouthshire have been sold. The purchasers, under the provisions of that Act, paid between five and ten times the amount of the annual values of the Livings. Like other Patrons under this Bill their compensation will be limited to one year's value. The consideration moneys have gone to increase the values of the Livings of which the advowsons have been so sold, or of other Livings in the Lord Chancellor's patronage, and are now represented by annual charges on the Common Fund of the Ecclesiastical Commissioners or capital funds held by them in favour of such augmented Livings.

Cl. 17. Provided that the compensation paid under this section shall be paid out of or charged on the property vested in the Welsh Commissioners under this Act, other than burial grounds and the property to be transferred to the representative body, in such manner that the burden thereof may be distributed amongst the University of Wales and the several County Councils in proportion to the value of the property transferred to them respectively.

The first part of this clause reproduces clause 17 of the Bill of 1909 and clause 19 of the Bill of 1895; persons holding lay offices for life may be compensated. Such persons include the chancellor of a diocese and the registrar, and in some parishes the parish clerk and sexton. It would seem that the bishops' secretaries and diocesan surveyors, as their offices are not freehold, will not be compensated.

The amount of compensation payable appears to be in the discretion of the Welsh Commissioners, subject to the consent of the Treasury. No principle is stated to guide the Welsh Commissioners in forming their judgment. Under the Irish Act (sec. 45) chancellors and registrars were entitled to an annuity equal to the average annual amount of their fees and emoluments for a period of three years; and under sec. 16 parish clerks and sextons were to have an annuity equal to their yearly salary as long as they continued to perform their duties.

The present Bill provides no express compensation for any lay officials connected with a church or chapel whose offices are not freehold, that is life, appointments. Thus the parish clerk of one parish who has in law a life interest will get compensation, while the parish clerk of the next parish, whose tenure of his office, though practically of equal permanence, may not be deemed by the Welsh Commissioners to be equal to freehold tenure, will get nothing. Pew openers are hardly likely to be regarded as holding their offices by a tenure equal to freehold and will therefore in all probability be entitled to no compensation.

The Irish Act (sec. 17) provided as compensation for persons holding temporary appointments connected with

a church or chapel who had been employed for two years before January 1, 1869, a gratuity not exceeding one year's salary, and sec. 45 contained provisions in favour of deputy registrars and their managing and other clerks who had been employed for five years for such reasonable compensation as should be just. Cl. 17, note.

Application of Residue.

18.—(1) Subject to the provisions of this Act, the property vested in the Welsh Commissioners by this Act, other than the property transferred to the representative body and burial grounds, shall be applied as follows :— Application of residue of property.

(*a*) The property formerly appropriated to the use of parochial benefices and transferred to a County Council shall be applied, in accordance with a scheme made by that Council and approved by the Secretary of State, to any charitable eleemosynary or public purpose of local or general utility ;

(*b*) All other property to which this section relates shall be applied in the first instance towards payment of the expenses of carrying this Act into execution (exclusive of any expenses incurred in the administration of any scheme made by a County Council) and, subject thereto, shall be applied by the University of Wales by way of payment either of capital or annual sums, or partly in one such way and partly in the other, for the benefit of the following institutions, that is to say, the University College of Wales, Aberystwyth, the University College of North Wales, the University College of South Wales and Monmouthshire, the National Library of Wales, and the National Museum of Wales, so, however, that the ultimate share

Cl. 18 (1).

of each such University College shall be one-fourth, and of each of the other institutions one-eighth, of the total amount so distributable.

(2) In framing schemes under this section as to the application of property formerly appropriated to the use of parochial benefices, due regard shall be had to the wants and circumstances of the parish in which the property is situate or from which it is or has been derived, and of the parish comprising the ecclesiastical parish to which any such property was attached, and generally to the circumstances of each particular case.

(3) A scheme made under this section may be amended or revoked by a scheme made and confirmed in like manner as the original scheme.

(4) Every scheme made and confirmed under this section shall be laid before both Houses of Parliament as soon as may be after it is confirmed, and shall have effect as if enacted in this Act.

The effect of this clause is that (*a*) Parochial property which is transferred to County Councils is to be applied to charitable eleemosynary or public purposes of local or general utility according to a scheme made with the approval of the Home Secretary by the County Council of the county in which the parish of the Benefice to which the property belonged is situate and with due regard to the interests of that parish and also the parish from which it is derived ; (*b*) all other properties are to be applied, firstly, in paying the expenses of carrying the Bill into execution, e.g. Welsh Commissioners' salaries, office expenses, compensation to patrons, lay officers, &c. (clauses 16, 17) ; and secondly, applied by the University of Wales for the benefit of the three colleges and the library and museum referred to, the share of each college being equal and double that of the library and museum respectively.

The Bill of 1909 was more detailed in its provisions as to parochial endowments which, as regards glebes, would have been transferred to the council of the rural parish, borough, or urban district in which the same might

Cl. 18, note.

be situate. It provided that these should be applied to the following purposes :

The erection or support of cottage or other hospitals, or dispensaries, or convalescent homes.

The provision of trained nurses for the sick poor.

The foundation and maintenance of public parish or district halls, institutes, and libraries.

Technical and higher education.

Any other charitable or eleemosynary purpose or public purpose of local or general utility for which provision is not made by statute out of public rates.

All other properties were to be applied, firstly, in paying the expenses of carrying the Bill into execution, and, secondly, towards technical and higher education in Wales. It will be noticed that the words " for which provision is not made by statute out of public rates " have been omitted from the present Bill, but presumably reliance is placed upon the necessity of the Home Secretary's approval of any scheme of application to ensure that the property shall not be applied merely in relief of the rates. So much may in existing circumstances be provided for out of the rates that the express restriction would doubtless prove very awkward without the enumeration of some express purposes to which the property might be applied.

The corresponding provisions of the Bill of 1895 were somewhat different. In addition to the purposes set out in the first Schedule of the Bill of 1909 there were others of a similar character, viz., workmen's dwellings and allotments, and the establishment and maintenance of a library, museum, or academy of art for Wales.

It was explained by Mr. Asquith in introducing the 1909 Bill that these have been omitted, as they had since 1895 received other provision at the hands of Parliament.

The Bill of 1895 (clause 9) limited the proportion of the funds arising under (*b*) applicable towards payment of the expenses of carrying the Act into execution to one third of such funds.

It is to be noted (see sub-clause (2)), that in framing schemes the interests both of the parish in which the property is situate and also of that to which it was formerly attached are to be considered. This provision will apply to tithe as well as the proceeds of glebe, so that while (as compared with the Bill of 1909) the rural

Cl. 18, note.

parishes and urban districts lose the actual disposition of the glebes the parishes gain a right to preferential consideration in the application of both tithe and glebe within their borders.

The Irish Act (sec. 68) left the application of the surplus derived from the Irish Church disendowment to the future direction of Parliament, but made this recommendation, namely, "It is further expedient that the proceeds of the said property should be appropriated mainly to the relief of unavoidable calamity and suffering, yet not so as to cancel or impair the obligations now attached to property under the Acts for the relief of the poor."

Part IV

Supplemental.

First fruits and tenths.

19. As from the date of disestablishment first fruits in respect of any subsequent appointment to any ecclesiastical office in the Church in Wales, and tenths in respect of any such office, shall cease to be payable :

Provided that nothing in this Act shall affect the liability of any person who at the passing of this Act has an existing interest in the emoluments of any ecclesiastical office in the Church in Wales to pay tenths, but such tenths shall after the date of disestablishment be paid to the Welsh Commissioners or as they may direct, and shall continue to be so payable so long as such person continues entitled to such an interest.

This clause is the same in effect as sub-clause (4) of clause 18 of the 1909 Bill.

First fruits are the profits of a living for one year according to a valuation made in Henry VIII.'s reign, and commonly known as the "King's Books." First fruits were made payable to the Crown by 26 Henry VIII., c. 3, on every avoidance of any living mentioned in the

King's Books. There are, however, now a great number of livings which for various reasons are exempt from this impost, and also from tenths. Tenths are an annual tax to the Crown of one-tenth of the annual value of a living according to the King's Books, payable by the incumbents of certain livings. In 1703 Queen Anne made over both first fruits and tenths to the Corporation then created, known as her "Bounty," for the augmentation of the maintenance of the poor clergy. A person who is an incumbent at the passing of the Act, and continues so to be at the date of disestablishment, will have to continue to pay tenths to the same extent as before the Act. Bishops are charged with an annual composition payment in lieu of first fruits and tenths, and it is not clear whether those of them in occupation of their sees at the passing of the Act will continue chargeable with the whole of this composition payment. The proviso continues the liability to pay tenths, but says nothing about first fruits in respect of an appointment prior to the Act. Between the date of the passing of the Act and the date of disestablishment payments in respect of first fruits and tenths will presumably continue to be made to Queen Anne's Bounty except in the case of appointments after the passing of the Act (clause 20 (3)).

Cl. 19, note.

Vacancies during suspensory period.

20. If any vacancy occurs in any ecclesiastical office in the Church in Wales, between the *passing of this Act* and the date of disestablishment—

(1) His Majesty the King may in the case of a vacant bishopric, on the petition of the Archbishop of Canterbury, or of any three Welsh bishops, nominate a person to fill the vacancy ; but any bishop so nominated shall not be summoned to or be qualified to sit in the House of Lords, and shall be subject to the provisions hereinafter mentioned :

(2) Any other vacancy may be filled by an appointment made by the same person in the same manner as if this Act had not passed :

Cl. 20.

(3) A person nominated or appointed to any office in pursuance of this section shall not be liable to pay any first fruits in respect of appointment to the office, or any tenths in respect of the office, but his interest as respects the office to which he is so nominated or appointed shall not be an existing interest within the meaning of this Act :

(4) If the person so nominated or appointed was at the passing of this Act the holder of any other ecclesiastical office in the Church in Wales he shall, until the date of disestablishment, pay over to the bishop of the diocese the net income of the last-mentioned office, who shall thereout make such provision for the discharge of the spiritual duties of that office as he may think proper until the date of disestablishment.

The provisions of the Bill of 1909 involved the loss of any right to compensation on appointment to a new office in the Church in Wales after the passing of the Act. The present Bill provides by clause 14 that as long as any person holds any ecclesiastical office in the Church in Wales he shall retain his existing interest in the emoluments of any office he held at the passing of the Act. An incumbent passing from one benefice in Wales to another between the passing of the Act and the date of disestablishment gains no " existing " interest in the emoluments of his new benefice but while under the Pluralities Act, 1838, he vacates his old Benefice, by this Bill he will retain an existing interest in the emoluments of that benefice. Under this clause he will have to pay the profits arising from the continuance of that existing interest to the bishop until disestablishment and under clause 14 (1) (*a*) thereafter to the Representative Body.

Provision as to trusts.

21.—(1) Where any cathedral or ecclesiastical corporation dissolved by this Act holds any property in trust for any charitable purpose, the property shall on the dissolution of the corporation vest in the Welsh Com-

missioners, and the Commissioners shall, on the request of the Representative Body, transfer the property to that body or to persons appointed by them, subject to the trusts affecting the same, and under the same supervision, local or otherwise, as heretofore, or as near thereto as the circumstances of the case will admit. Cl. 21 (1).

(2) Where any ecclesiastical persons are immediately before the date of disestablishment in right of their offices entitled to be members of any bodies constituted for the management of any private endowment, or trustees for the management of property belonging to institutions or private foundations for purposes not ecclesiastical, then the persons (if any) who may hereafter at any time discharge duties similar or analogous to those now discharged by those ecclesiastical persons shall be entitled to succeed in their room and to be members of such bodies and to act as such trustees.

Sub-clause (1) is similar to clause 19 of the Bill of 1909 and clause 22 of the Bill of 1895.

It provides for cases in which an incumbent or a chaplain, or any other ecclesiastical corporation, happens to be *ex-officio* sole trustee of a charity. Where the incumbent of a parish is a trustee jointly with other persons if the trust is "for the management of any private endowment or property belonging to institutions or private foundations for purposes not ecclesiastical," he will, and his *de facto* successor, will be entitled to act as such trustee.

It is not clear to what sort of trusts this provision is intended to extend: the description of the trusts does no tappear to be by any means co-extensive with "trust for any charitable purpose" mentioned in sub-clause (1) and it expressly excludes of all others "ecclesiastical" charities, though why the person discharging in the disestablished Church the duties analogous to those of an incumbent should be deemed unfit to be the trustee of an "ecclesiastical" charity is difficult to understand. In the case, for instance, of a Church room of which the

Cl. 21, note. incumbent of the benefice A is *ex officio* a trustee. After disestablishment, there is no benefice A, although the person who was incumbent retains an interest in the endowments thereof. Has the "incumbent" ceased to be a trustee of the Church room? Apparently he has.

Saving for marriage law.

22. Nothing in this Act shall affect the law with respect to marriage in Wales or Monmouthshire, or the right of a bishop of the Church in Wales to license churches for the solemnisation of marriage or to grant licences to marry:

Provided that where neither party to a marriage is a member of the Church in Wales they shall not be entitled as of right to have the marriage solemnised in a Church of the Church in Wales.

The effect of this clause seems to be that (1) the existing right of a person to be married in the Church of the ecclesiastical parish in which he or she resides (4 Geo. IV. ch. 76, sec. 2), and the existing duty of the incumbent of such parish to proclaim banns and perform marriage in such a case (Agar *v.* Holdsworth, 2 Lee 515), and (2) the existing restriction by which an incumbent is forbidden to proclaim banns or perform marriages when neither of the parties lives in his parish (4 Geo. IV. ch. 76, sec. 2, 19 & 20 Vict. ch. 104, sec. 15) are attempted to be preserved. The object of the retention of the bishop's right to license churches for solemnisation of marriage is not very clear. The bishop's power in this respect is limited to certain exceptional cases only, viz.: districts formed under 1 & 2 Will. IV. ch. 38 and chapels serving "populous districts remote from the parish church" (6 & 7 Will. IV. ch. 35 sec. 26). In all other cases, either the use of the Church for the solemnisation of marriage is inherent as in an ancient parish or is given by statute as in certain new ecclesiastical parishes or is given by the Ecclesiastical Commissioners under statutory powers which are not saved by the Bill.

It appears from the proviso which expressly takes away the right to require a marriage to be solemnised in Church when both parties are Nonconformists, that

Cl. 22, note.

in all other cases it is intended to preserve this right. But this seems inconsistent with clauses 1 to 3. After disestablishment, there will remain no obligation on the Church in Wales to maintain any particular incumbency, or any particular parochial boundaries. It is difficult to see how the rights of parishioners in the established Church with regard to marriage, or their obligations, e.g. as to payment of marriage fees, can be enforced in the disestablished Church. Similarly, the bishops' practice of issuing marriage licences presupposes the existence of officials, the Chancellor and Registrar and Surrogates, all of whom will disappear under clauses 2 and 3. The attempt to preserve in the disestablished Church some of the functions of the established Church, perhaps on grounds of public convenience, would seem to be quite impracticable.

In Ireland, after disestablishment, under 33 & 34 Vict. ch. 110 (Matrimonial Causes, etc. (Ireland) Act, secs. 32–42) provision was made with regard to the marriage law and the disestablished Church. The effect of the sections was, however, merely to authorise without attempting to require the solemnisation in Church of marriages between persons, both of whom were "Protestant Episcopalians." The elaborate character of the enactments in these sections is an indication of the complexity of the adjustments necessary to make the machinery of Church and State as to marriages possible in any degree under the altered conditions of disestablishment. The attempt to secure the same result by a clause of four lines in the present Bill leaves so many points vague and unsettled that it is difficult to believe it can be successful.

Supplemental provisions as to burial grounds.

23.—(1) Nothing in this Act shall during the incumbency of an existing incumbent of an ecclesiastical parish—

(*a*) affect any powers or rights with respect to burials in the burial ground of that parish, including the consecrated portion of any burial ground provided under the Burial Acts, 1852 to 1906, or affect any enactment requiring or authorising a notice or certificate of any burial to be given to the incumbent; or

(*b*) affect the right of any existing clerk or sexton to fees in respect of such burials.

(2) The vesting of any burial ground under this Act shall be without prejudice to any existing public and private rights of burial therein.

(3) Where any burial ground which, under this Act, is transferred to any authority (whether a burial board council, chairman of a parish meeting and overseers, or trustees) adjoins a church vested in the Representative Body, then after the determination of the incumbency of the existing incumbent—

(*a*) the burial ground shall be held subject to a right of way in the Representative Body, and the clergy and congregation attending the church, and such other persons as may resort thereto for the purpose of Divine worship, or of repairing the church, or for any other lawful purpose ; and

(*b*) no funeral shall be allowed to take place during the usual time of the ordinary services in the church, and such other regulations shall be made as may be found necessary to prevent any interference, by persons attending funerals, with the clergy or congregation attending the church ; and

(*c*) any road or path through the burial ground to the church shall be kept in good and sufficient repair.

(4) Subject as aforesaid, every such burial ground shall after the determination of the incumbency of the existing incumbent be held for the same purposes and subject to the same rules and regulations as if the Burial Acts, 1852 to 1906, were in force in the area of the

authority by which the burial ground is to be administered and as if it were a burial ground provided under those Acts, and those Acts, so far as is consistent with the tenor thereof, and with the provisions of this Act, shall apply accordingly : Cl. 23 (4).

Provided that where any such burial ground is under this Act transferred to the chairman of the parish meeting and overseers of a rural parish the necessary steps shall forthwith be taken for the constitution of a burial authority for the parish.

This clause provides for churchyards after disestablishment and must be read in conjunction with clauses 8 (1) (*a*) (vi) and 24 (1) (*b*). The general effect can be shortly stated. Closed churchyards can be claimed by the Representative Body, and if so claimed in rural parishes will continue if already so repariable, repairable by the Parish Councils under the Local Government Act, 1894 s. 6 (1) (*b*). In rural parishes where not so repariable and in all urban parishes they will presumably be repairable by the Representative Body (clause 24 (1) (*b*)).

Closed churchyards not claimed by the Representative Body will be transferred to the burial authority (clause 8 (1) (*b*)) and the cost of upkeep will fall upon the parish or urban district council concerned (clause 24 (1) (*b*)).

Existing churchyards will be vested during the incumbency of the present incumbent in him and he will retain his rights to fees and any other rights he may have, e.g. right to refuse permission for the burial of any non-parishioner, to supervise inscriptions on monuments, and the right to notice of intention to bury without a service or with a service other than that of the Church of England ; and while the incumbent's interests last, so long and no longer, will the rights of the existing parish clerk and sexton to fees continue.

" Incumbent " and " Incumbency " are technical terms, having relation to a benefice. It is difficult to see what their exact meaning will be under the altered circumstances, when benefices, as such, no longer exist.

Cl. 23, note.

After the existing incumbent ceases to hold the benefice the existing churchyards hitherto required by law to be kept with reverent care by the authorities of the Church and to be exempt from all secular or profane uses, will pass under the control of the local authority, and be subject to all the incidents attaching to consecrated burial grounds under the Burial Acts. Apparently "the bishop of the diocese" whoever that may be after disestablishment will still have power to decide as to the fitness of inscriptions upon tombstones (10 & 11 Vict. c. 65, s. 51 and 15 & 16 Vict. c. 85, s. 38).

owers of estries and hurch-ardens.

24.—(1) There shall be transferred to the council of every borough, and urban district in Wales and Monmouthshire—

(*a*) the powers, duties, and liabilities of the vestry of every parish within the borough or urban district, except so far as they relate to the affairs of the Church or to ecclesiastical charities;

(*b*) the powers, duties, and liabilities of the churchwardens of every such parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed burial grounds wherever the expenses of such maintenance and repair are payable out of the poor rate under the Burial Act, 1855, and the burial ground is not transferred to the Representative Body.

(2) The council of every such borough and urban district shall have the like powers and duties with regard to the appointment of overseers and the appointment and revocation of appointment of assistant overseers as are conferred on parish councils by section five of the Local Government Act, 1894, and that section shall apply accordingly:

Provided that paragraph (*c*) of subsection (2) of that section shall not, unless the Local Government Board otherwise direct, apply to any parish in any such borough or urban district, but the legal interest in all property referred to in the said paragraph, and with the exception therein mentioned, shall vest only in the overseers of the parish, subject to all trusts and liabilities affecting the same. Cl. 24 (2).

(3) Nothing in this section shall affect any order which may have been made by the Local Government Board under sec. 33 of the Local Government Act, 1894.

By the Local Government Act, 1894, the civil rights, duties and liabilities of churchwardens and vestries in rural parishes were transferred to the parish councils. This clause makes similar provisions with regard to urban parishes, transferring the rights, duties, and liabilities to the borough or urban district councils.

It is difficult to say what rights, duties, or liabilities of churchwardens exist to be affected by this provision, but in the case of vestries it may include the consideration of the County Rate basis, and the custody of parish documents.

In future overseers and assistant overseers in urban parishes will be appointed by the borough and urban district councils and parish property vested in the overseers and churchwardens will be vested solely in the overseers.

In probably the majority of urban parishes the powers referred to in this clause have already been transferred by Orders of the Local Government Board to the borough and urban district councils under the permissive provisions of sec. 33 of the Local Government Act, 1894.

25. During the continuance of the existing interest of the holder of any ecclesiastical office in the Church in Wales in any property transferred under this Act to the representative body, any power of sale, leasing, mortgaging, exchanging, or otherwise disposing of or dealing with that property exercisable by the holder of that office at

Powers of incumbents with respect to property in which they have existing interest.

Cl. 25. the passing of this Act shall continue exercisable by him, but no such power shall be exercised by him without the consent of the representative body, and such consent as aforesaid shall be substituted for any consents or approval which would have been required if this Act had not been passed :

Provided that where under the Acts in pursuance of which property is disposed of or dealt with the whole or any part of the proceeds of the consideration received for the sale, leasing, mortgage, exchange, disposal of or dealing with the property is payable to the Ecclesiastical Commissioners or Queen Anne's Bounty or the Board of Agriculture and Fisheries, or any other authority, it shall be paid to the representative body, and shall, subject to the existing interest of the incumbent, become the property of that body.

This clause corresponds to sub-clause (1) of clause 20 of the 1909 Bill, but the Bill of 1895 contained no clause dealing specially with these powers.

The most important powers affected by the clause are those conferred by 1 & 2 Vict. c. 23, under which a parsonage may be sold with the consent of the patron, ordinary and archbishop ; 2 & 3 Vict. c. 49, under which other buildings may be sold with the like consents ; 5 & 6 Vict. c. 108 and 21 & 22 Vict. c. 57, which give power to bishops, deans and chapters, incumbents, and other ecclesiastical corporations, with the consent of the Ecclesiastical Commissioners, and, in the case of incumbents, with the consent also of their patrons, to lease, sell or exchange lands or minerals belonging to their preferments ; the Improvement of Lands Act, 1864 (27 & 28 Vict. c. 114), under which an incumbent can charge his glebe for improvements with the consent of the bishop and patron ; the Tithe Acts (5 & 6 Vict. c. 54 and 9 & 10 Vict. c. 73), under which an incumbent can exchange glebe lands for other lands of equal value with the approval of the Board of Agriculture ; the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), under which an incumbent can sell glebe with the consent of the Board of Agriculture ;

and the Small Holdings and Allotments Act, 1908 (8 Edw. VII. c. 36 s. 40), under which glebe can be let with the consent of the Ecclesiastical Commissioners. Cl. 25, note.

All these powers are to be exercisable by the holders of any ecclesiastical office during the continuance of their existing interests, with the consent alone of the representative body, that is to say of the Reversioners. In every case where the whole or any part of the proceeds of the transaction would in existing circumstances be payable to the Ecclesiastical Commissioners, Queen Anne's Bounty, or the Board of Agriculture, or any other authority, it will be payable to the representative body.

After the cessation of existing interests the representative body will presumably have all the powers of an ordinary corporation, while the Welsh Commissioners and any local authority have full powers conferred upon them by clause 26 subject to certain consents.

It is not clear whether this clause is intended to apply to an incumbent's power to mortgage his benefice to Queen Anne's Bounty; but such a mortgage would be obviously impossible after the passing of the Act. With regard to the repayment of mortgages to Queen Anne's Bounty already existing, provision purports to be made in clause 31 (which see).

Powers of management and sale.

26.—(1) The Welsh Commissioners, and any local authority shall, with respect to any property vested in them by or under this Act, have power to manage the property, and, as incidental thereto, power to sell, lease, or exchange any part thereof; but any such power of sale, leasing, or exchange shall not be exercised by the Welsh Commissioners without the consent of the Treasury, or by a local authority without such consent as is by law required for the purposes of the sale, leasing, or exchange of land by that authority:

Provided that nothing in this section shall be construed as conferring a power on any authority to sell any part of a burial ground.

Cl. 26. (2) The property transferred under this Act to the University of Wales shall not be reckoned as part of the property held by that university for the purposes of the limitation contained in the charter of the university on the amount of property which they are authorised to hold, and the university may, notwithstanding anything in that charter, hold and apply the property so transferred to them, and make any payments thereout required for preserving existing interests, in accordance with the provisions of this Act, and shall for that purpose have power to manage the property, and as incidental thereto to sell, lease, or exchange any part thereof; but no such power of sale, leasing, or exchange shall, whilst the university continues liable to make payments for the purpose of preserving existing interests, be exercised without the consent of the Treasury.

This clause confers a general power of sale and leasing on the Welsh Commissioners, the University of Wales, and on any local authority. For example, it empowers a County Council in whom tithe rentcharge is vested, with the consent of the Local Government Board, to sell the same. The bill does not provide that the owners of the land out of which the tithe arises shall have a right of pre-emption.

The Bills of 1909 (clause 21) and of 1895 (clause 23) contained similar provisions except that there was nothing in those Bills to have prevented the sale of any part of a burial ground. The Irish Act (sec. 34) gives the Commissioners a general power of sale of land, and sec. 32 provides for owners buying the tithe on their own land.

The University of Wales comprising the three colleges referred to in clause 18 (1) (*b*) was incorporated by Royal Charter dated November 30, 1893, with licence to hold property up to the annual value of £10,000 exclusive of lands and buildings used for the immediate purposes of the university. By this clause property transferred to the university by the Welsh Commissioners is not to be included in this limitation.

27.—(1) Nothing in this Act shall affect any liability to pay tithe rentcharge, or the liability of any lay impropriator of any tithe rentcharge to repair any ecclesiastical building, but a county council shall not, by reason of being entitled to or receiving any tithe rentcharge under this Act, be liable for the repair of any ecclesiastical building. Supplemental provisions as to tithe rentcharge.

(2) Such liability as aforesaid of a lay impropriator may be enforced in the temporal courts at the instance of the representative body in like manner as if such liability arose under a covenant made with the representative body and running with the tithe rentcharge.

This clause refers to the liability under certain circumstances of owners of tithe rentcharge to repair the chancel of the church of the parish from which the tithes are derived. To a certain extent this liability, originally attaching to the rector who had the great tithes, has been held to follow the ownership of the tithe even when detached from the rectory. The object of the clause is, therefore, to prevent the possibility of a claim for repairs of the chancel being made against the County Council by reason of that body's owning the tithe. The clause provides that the liability of a lay impropriator to repair the chancel shall not be affected. The Bill of 1909 (clause 22) and the Bill of 1895 (clause 24) contained the same provision with regard to the liability of County Councils, but did not expressly deal with the liability of a lay impropriator.

As to the liability of incumbents and other holders of ecclesiastical offices to repair chancels, see clause 15 (4) and notes.

28.—(1) The respective registrars of the diocesan or other registries, or any other officers having the possession or custody of any books or documents relating to any of the property vested in the Welsh Commissioners by this Act, and not in the possession or under the control of the Ecclesiastical Commissioners or of Queen Anne's Delivery up of and access to books and documents.

Cl. 28 (1). Bounty, shall, within three months next after the date of disestablishment, deliver the same to the Welsh Commissioners.

(2) The Ecclesiastical Commissioners and Queen Anne's Bounty respectively shall deliver to the Welsh Commissioners any books or documents in their possession or under their control relating exclusively to the property vested in the Welsh Commissioners by this Act.

(3) The Welsh Commissioners shall give receipts for the books and documents so delivered to them and—

(*a*) shall, where any such books and documents relate exclusively to property transferred to any body under this Act, hand over those books and documents to that body ; and

(*b*) shall, where any such books and documents relate to property transferred under this Act partly to one body and partly to another body, hand over those books and documents to such one of those bodies as the Welsh Commissioners think fit ; and

(*c*) may hand over to any person, authority, or body any such books and documents other than aforesaid, which they think ought to be placed under the control of that person, authority, or body ; and

(*d*) shall lodge in the National Library of Wales the residue of such books and documents when not required by the Welsh Commissioners for the execution of their duties under this Act.

(4) Where by virtue of this section any books and documents are handed over to any body and relate also to property transferred to some other body, the body to whom those books and documents are handed over shall

be under the same liability as respects the production and the delivery of copies of those books and documents as if they had given to that other body as incident to a conveyance on sale an acknowledgment in writing of the right of that other body to production of those books and documents and to delivery of copies thereof. Cl. 28 (4).

(5) Nothing in this section shall affect section seventeen of the Local Government Act, 1894, or apply to any books or documents in the possession or custody of the Board of Agriculture and Fisheries.

This clause is similar to clause 23 of the Bill of 1909 and clause 27 of the 1895 Bill, except that in the two later bills the National Library of Wales is substituted for the Public Record Office in London. It deals only with books relating to property to be transferred by the Bill. Under sec. 17 of the Local Government Act, 1894, "the custody of registers of baptisms, marriages, and burials, and documents containing entries, wholly or partly, relating to the affairs of the Church or ecclesiastical charities," was left untouched. All other public documents of the parish were to be deposited as the Parish Council should direct.

29.—(1) The Welsh Commissioners may, with the consent of the Treasury, and upon such terms as the Treasury may approve, borrow such sums of money as they may think expedient for carrying into effect any provisions of this Act, and may, save as otherwise expressly provided by this Act, give as security for the repayment of any sums so borrowed and the interest thereon, any part of the property vested in them by this Act, but shall determine as between the several parts of property so given as security the part or parts to be primarily liable for the several sums so borrowed. Borrowing Powers.

This provision for the apportionment of the primary liability was first inserted in the 1909 Bill. As the words

Cl. 29 (1), note. stand it would be possible for the Welsh Commissioners on the vesting in them of, say the parsonage houses, to mortgage them and forthwith transfer them under clause 8 (1) subject to the mortgage to the Representative Body.

(2) The National Debt Commissioners, if they think fit, may, out of any money in their hands, advance to the Welsh Commissioners, with such guarantee as is by this Act authorised (but not otherwise), any money which by this Act the Welsh Commissioners are authorised to borrow.

(3) *The Treasury may, if they think fit, guarantee the payment of the principal and interest of all or any part of any money borrowed by the Welsh Commissioners.*

(4) Any security given by the Welsh Commissioners in pursuance of this Act shall be in such form, and may contain such powers of sale or otherwise, as the Treasury approve, and there shall be certified thereon, in such form and manner as the Treasury direct, any guarantee given by the Treasury.

(5) *For giving effect to the guarantee aforesaid, the Treasury, in aid of any money applicable under this Act for payment of principal and interest for the time being accrued due in respect of any money borrowed by the Welsh Commissioners in pursuance of this Act, may cause to be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, such sums as may be necessary for payment of the said principal and interest, or of any part thereof respectively.*

(6) If any money is at any time issued out of the Consolidated Fund in pursuance of the guarantee aforesaid, the Treasury shall cause the same to be repaid to the Consolidated Fund out of the funds in the hands of the Welsh Commissioners.

This clause contains provisions almost identical with clause 24 of the 1909 Bill and (except as to sub-clause 1) with clause 24 of the Bill of 1895 and with secs. 59 to 64 of the Irish Act. **Cl. 29 (6), note.**

Accounts of Welsh Commissioners and audit.

30.—(1) At the end of every financial year accounts of the receipts and expenditure of the Welsh Commissioners, both of capital and of income, shall be made up in such form and with such particulars as the Treasury may direct, and shall be audited by the Controller and Auditor General as public accounts in accordance with such regulations as the Treasury may make, and shall be laid before Parliament, together with his report thereupon.

(2) It shall be lawful for the Welsh Commissioners to invest any money for the time being in their hands in accordance with regulations made by the Treasury in any securities which are for the time being authorised by Parliament as investments for savings banks funds.

Sub-clause (1) is identical with clause 25 (2) of the 1909 Bill, and similar provisions are made by clause 30 of the Bill of 1895 and sec. 37 of the Irish Act.

The limitation in sub-clause (2) as to the investment of their funds by the Welsh Commissioners in "savings bank securities" is new.

Provisions as to vesting of stock and copyhold land.

31.—(1) Where any property vested in the Welsh Commissioners by this Act consists of stock within the meaning of the Trustee Act, 1893, the Welsh Commissioners shall for the purpose of enabling such stock to be registered in their names have the right to transfer or call for the transfer of such stock in like manner as if a vesting order had been made for the purpose by the High Court under the Trustee Act, 1893.

(2) Where any property vested in the Welsh Commissioners or the Ecclesiastical Commissioners or Queen

Cl. 31 (2). Anne's Bounty under this Act consists of copyhold land the Welsh Commissioners, the Ecclesiastical Commissioners, and Queen Anne's Bounty shall, as respects such land respectively, have the like powers as if they had been appointed by the Court under section 33 of the Trustee Act, 1893, to convey the land, and section 34 of that Act shall apply accordingly.

Clause 29 of the Bill of 1909 contains similar provisions.

Power to settle differences and make adjustments.

32. The Welsh Commissioners shall have power to decide any question arising under this Act between different local authorities, and to make any adjustment of rights or liabilities incidental to the distribution of property under this Act among such local authorities.

Clause 30 of the Bill of 1909 is identical.

Adjustment of debts and liabilities.

33.—(1) The authorities interested (including the Welsh Commissioners, the Ecclesiastical Commissioners, Queen Anne's Bounty, the representative body, the University of Wales, and any local authority) may make agreements for adjusting or apportioning any property, income, debts, liabilities, and expenses, so far as affected by this Act, or by any scheme or order under this Act, of the parties to the agreement.

(2) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, or liabilities so transferred or retained, or of joint user, or in respect of the salary or remuneration of any officer or person.

(3) The power to make such agreements shall, in the case where parts of property subject to a charge are under this Act transferred to different bodies, include a power

for the Welsh Commissioners and the representative body to agree as to the body by which or the proportions in which the several bodies are as between themselves to be liable for the charge, but nothing in such an agreement shall prejudice the right of any such person to any such charge or any charge under statute or otherwise for the recovery thereof or any part thereof. Cl. 33 (3).

(4) In default of agreement, and as far as any such agreement does not extend, any adjustment required for the purposes of this Act shall be referred to arbitration.

Clause 31 of the Bill of 1909 is in similar terms.

The great majority of mortgages charged on livings are for terms of years and repayable out of income. There is no indication on what principle these charges should be allocated, e.g. should the object of the loan be regarded or should the ultimate destination of the income ?

It will be noted that the private lender under the Gilbert Acts is not provided for, though his remedies, which are by statute sequestration and distress, will in many cases be useless, as there can be no sequestration of the income after it has gone to secular uses, and there may be no land to distrain on.

34. Any arbitration under this Act shall be conducted in accordance with the Arbitration Act, 1889, and the arbitrator shall have power to disallow as to costs in the arbitration the costs of any witness whom he may consider to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement under the last foregoing section might have provided. Arbitration.

35.—(1) In this Act, unless the context otherwise requires— Interpretation.

The expression "existing" means existing at *the passing of this Act*;

Cl. 35 (1).

The expression "ecclesiastical office" means any bishopric, ecclesiastical dignity, or preferment within the meaning of the Church Discipline Act, 1840, and includes any lay office in connection therewith, or in connection with any cathedral corporation :

The expression "cathedral corporation" means any dean and chapter, and also any corporation of minor canons, or vicars choral, or any other subordinate corporation of or belonging to or connected with any cathedral or collegiate church in Wales :

The expression "ecclesiastical person" means a bishop and the holder of any ecclesiastical office who is in holy orders :

The expression "right of patronage" includes any advowson, right of presentation, or right of nomination to an ecclesiastical office :

The expression "synod" includes any assembly or convention :

The expression "property" includes all property, real and personal, including things in action and rights of action ; and where any property is held in trust for or for the benefit of the holder of any ecclesiastical office as such, or for any cathedral or ecclesiastical corporation, that property shall be deemed for the purposes of this Act to belong to that office or corporation ; and the burial ground of any ecclesiastical parish shall, unless provided under the Burial Acts, 1852 to 1906, or the Public Health (Interments) Act, 1879, or otherwise vested in any local or other public authority be deemed for the purposes of this Act to be property belonging to an ecclesiastical office in the Church in Wales :

The expression "church" includes cathedral and other churches, chapels of ease, and other public chapels of the Church in Wales and in the case of a cathedral church includes the chapter house and cloisters and other precincts of the cathedral church :

The expression "ecclesiastical residence" means any parsonage house and any house of residence of any bishop or member or officer of a cathedral corporation and any offices belonging thereto :

The expression "house" includes any curtilage or garden appurtenant to the house :

The expression "burial authority" means any burial board and any council, committee, or other local authority having the powers and duties of a burial board under the Burial Acts, 1852 to 1906, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act.

The expression "tithe rentcharge" includes all payments in lieu of or in the nature of tithes or tithe rentcharge.

The expressions "first fruits" and "tenths" include any sums payable in lieu of first fruits and tenths.

The expression "county" includes a county borough, and the expression "county council" includes the council of a county borough, and "county fund" in relation to a county borough means the borough fund or borough rate.

(2) Property shall not for the purposes of this Act be deemed to be situate in Wales or Monmouthshire by reason only of being invested in the stocks, funds, or securities of any company owning property so situate.

Cl. 35, note.

The definitions of "burial authority" and "tithe rentcharge" are new, otherwise this clause is similar to clause 33 of the Bill of 1909.

In the Bill of 1895 "Church" was not defined. Cathedrals, under that Bill as introduced, were dealt with differently from churches, the former being taken by the State and the latter left to the disestablished Church. However, Mr. Asquith, during the debate in Committee, agreed to insert provisions having the same effect as this definition. Under the provisions of this Bill the Church will retain both.

In the Irish Act, sec. 72, Church was similarly defined except that it did not include cathedrals.

"Ecclesiastical Residences" may be transferred to the Representative Body under clause 8 (1) (*a*) (ii) and by virtue of the definitions above of "ecclesiastical residence" and "house" it appears that offices belonging to the ecclesiastical residences and curtilages or gardens appurtenant thereto will go with the houses. This seems to be the minimum accommodation that could reasonably be allowed to go with the residences and might be so interpreted as to make very inadequate provision for the reasonable enjoyment of the residences.

Sub-clause (2) did not appear in the Bill of 1895 as introduced, but an amendment to this effect was promised.

(3) In all enactments, deeds, and other documents in which mention is made of the Church of England, the enactments and provisions relating thereto shall be construed as including the Church in Wales, but as to that Church subject to the provisions of this Act.

This sub-clause is similar to c. 33 (3) of the Bill of 1909. Its object is probably to prevent clergymen ordained by Welsh bishops for the service of the Welsh Church reorganised as a voluntary or non-established society, from being subject to the disabilities and restrictions imposed on colonially ordained clergy by the Colonial Clergy Act, 1874 (37 & 38 Vict. c. 77). The clergy of the Church of Ireland are exempted by this Act itself from its operation.

It is not easy to see what (if any) will be the effect of this sub-clause on ecclesiastical statutes such as the Resignation Acts and the Pluralities Acts. See notes to clauses 1 and 3. **Cl. 35 (3), note.**

36. This Act may be cited as the Welsh Church Act, 1912. Short title.

SCHEDULES.

FIRST SCHEDULE.

Part I.

Property vested in the Ecclesiastical Commissioners which is to be deemed Welsh Ecclesiastical Property.

(1) Property which does not belong to and is not appropriated to the use of any Ecclesiastical office or cathedral corporation, but which is, or is the produce of, or is or has been derived from, property which became vested in the Ecclesiastical Commissioners before the passing of this Act, and which immediately before becoming so vested belonged to or was appropriated to the use of an ecclesiastical office or cathedral corporation in the Church in Wales, or the holder of any such office as such.

For the purpose of determining what property is property within the meaning of the above provision any property situate in, or issuing out of property situate in, Wales or Monmouthshire which has been purchased by the Ecclesiastical Commissioners shall be deemed to have been purchased with the proceeds of sale of and so derived from property which immediately before being vested in the Ecclesiastical Commissioners belonged to an ecclesiastical office in the Church in Wales.

(2) Property which belongs to, or is appropriated to the use of, any ecclesiastical office or cathedral corporation in the Church in Wales, or the holder of any such

office as such, and which is or has been derived from sources other than grants made by the Ecclesiastical Commissioners.

Part II.

Adjustments.

(1) The Ecclesiastical Commissioners shall exchange such property comprised in paragraph (1) of Part I. of this Schedule as is property situate elsewhere than in Wales or Monmouthshire, or is property issuing out of property so situate, for all property vested in them which is situate in, or issues out of property situate in, Wales or Monmouthshire, and which became vested in the Ecclesiastical Commissioners before the passing of this Act, and which immediately before becoming so vested belonged to or was appropriated to the use of any ecclesiastical office or cathedral corporation other than an ecclesiastical office or cathedral corporation in the Church in Wales, or the holder of any such office as such, and shall deduct from the property comprised in paragraph (1) of Part I. of this schedule such sum of money as the Commissioners may ascertain and by order declare to be due by way of equality of exchange.

(2) There shall be charged on the property mentioned in paragraph (1) of Part I. of this Schedule so far as it is able to bear them, and so long as they continue payable, the sums before the date of disestablishment payable by the Ecclesiastical Commissioners out of their common fund for ecclesiastical purposes in the Church in Wales other than the augmentation or endowment of parochial benefices or towards the stipends of assistant clergy, and the common fund of the Ecclesiastical Commissioners shall be exonerated from the liability to make such payments except so far as such property as aforesaid is not able to bear them.

SECOND SCHEDULE.

PROPERTY VESTED IN QUEEN ANNE'S BOUNTY WHICH IS TO BE DEEMED WELSH ECCLESIASTICAL PROPERTY.

Property which belongs to or is appropriated to the use of any ecclesiastical office or cathedral corporation in the Church in Wales, or the holder of any such office as such, except, in the case of any such property which—

(*a*) consists of, or is the produce of, or is or has been derived from grants made by Queen Anne's Bounty out of the Royal Bounty Fund; and

(*b*) does not consist of money arising from the sale of parsonage houses in Wales or Monmouthshire, or the securities in which any such money is for the time being invested;

such part thereof as has been derived from sources other than Welsh sources.

For the purpose of determining what property is derived from sources other than Welsh sources, Queen Anne's Bounty shall ascertain and by order declare the amount by which grants made out of the Royal Bounty Fund for the purposes of the Church in Wales have exceeded the sums received by them by way of first fruits and tenths in respect of ecclesiastical offices in the Church in Wales, and such part of any grant so made by them as is proportionate to such excess shall be deemed to have been derived from sources other than Welsh sources.

THIRD SCHEDULE.

PART I.

PROPERTY WHICH MAY BE TRANSFERRED BY THE ECCLESIASTICAL COMMISSIONERS TO THE REPRESENTATIVE BODY.

Property vested in the Ecclesiastical Commissioners which has by them been before the twenty-fifth day of

April nineteen hundred and twelve annexed or appropriated to any ecclesiastical office or cathedral corporation in the Church in Wales by way of grant, or is the produce of, or is or has been derived from, property so annexed or appropriated and which is not Welsh ecclesiastical property within the meaning of this Act.

Part II.

Property which may be transferred by Queen Anne's Bounty to the Representative Body.

Property vested in Queen Anne's Bounty which has by them been before the twenty-fifth day of April nineteen hundred and twelve annexed or appropriated to any ecclesiastical office or cathedral corporation in the Church in Wales by way of grant, or is the produce of, or is or has been derived from, property so annexed or appropriated, and which is not Welsh ecclesiastical property within the meaning of this Act.

Part III.

Property a Perpetual Annuity of the Annual Value of which may be charged on the Common Fund of the Ecclesiastical Commissioners.

1. Charges on the common fund of the Ecclesiastical Commissioners made before the twenty-fifth day of April nineteen hundred and twelve by way of grant for any ecclesiastical purpose in the Church in Wales, not being charges in respect of the property mentioned in Part I. of this Schedule and not being Welsh ecclesiastical property within the meaning of this Act.

2 The average amount granted by the Ecclesiastical Commissioners out of the annual appropriations from the surplus income of their common fund during the seven years ending the thirty-first day of October nineteen hundred and eleven by way of augmentation or endowment of benefices or towards the stipends of assistant clergy in Wales and Monmouthshire.

Part IV.

Property a Perpetual Annuity of the Annual Value of which may be charged on the Royal Bounty Fund.

The average amount by which the grants made out of the Royal Bounty Fund for the purposes of the Church in Wales in the seven years ending the thirty-first day of December nineteen hundred and eleven have exceeded the average annual amounts received by Queen Anne's Bounty in those years by way of first fruits and tenths in respect of ecclesiastical offices in the Church in Wales.

GENERAL SUMMARY.

It may perhaps be useful to give a more general conspectus than is possible in detached comments upon clauses of the scope of the Bill and its effect on the position and organisation of the Church in Wales, as well as upon its endowments and of the machinery by which the results are brought about.

The scheme of the Bill naturally falls into two divisions : (A) concerning disestablishment and the constitutional changes in Church and State flowing therefrom and, included therein, the necessary provisions for the re-constitution of the Church in Wales on its disestablished basis, and (B) concerning disendowment and the application of the endowments of which the ecclesiastical corporations are deprived to (a) the partial re-endowment of the disestablished Church and (b) secular objects.

A. DISESTABLISHMENT AND RE-CONSTITUTION.

1. From July 1st following the passing of the Act " the Church of England so far as it extends to and exists in Wales and Monmouthshire " is declared to " cease to be established by law."

Precisely what and how much this means, if it means anything beyond what is contained in the subsequent express provisions of the Bill, it is difficult to see. It is, however, a statutory declaration, without which even the express provisions might to the supporters of the Bill fail to be satisfying, preventing any parson or member of the Church in Wales from hereafter claiming any privilege that may flow from " establishment." The substantial results are, however, not left to be merely inferred from this declaration : the provisions are expressed in full detail.

2. From the date of disestablishment ecclesiastical corporations sole and aggregate are dissolved. Existing bishops, deans and canons, rectors, vicars and others will retain their offices and emoluments as vested interests, and persons who may succeed to their duties may in due course be appointed and be called by the same titles, but the legal chain which would unite the present holder to his predecessors and his successors

so as to make of them all one legal never dying corporation will be snapped. Dissolution of a corporation is equivalent to the death of a natural person, and primarily involves the consequence that the property of the corporation has no longer a legal owner and that some provision must be made for its disposal.

3. The four bishops of the Church in Wales cease to be members or qualified for membership of the House of Lords : but bishops, as well as priests and deacons of the Church in Wales, cease to be disqualified for membership of the House of Commons.

The Houses of Convocation of Canterbury lose the Welsh bishops and clergy or their representatives.

4. Ecclesiastical Courts in Wales are deprived of all jurisdiction and the law administered by those Courts ceases to exist as law in Wales, but members (that is to say both clergy and laity) of the Church in Wales are to be deemed to have agreed together by a binding agreement to observe this law and the present " articles, doctrines, rites, rules, discipline, and ordinances of the Church of England " subject to any modifications which may be made therein by constitutions and regulations for general management and good government of the Church in Wales and the property and affairs thereof framed by synods of the bishops, clergy and laity of the Church in Wales or their elected representatives, the election of such representatives being made in such manner as the bishops, clergy and laity of the Church in Wales may think fit.

As the ecclesiastical law is to be binding upon members of the Church in Wales as if it formed part of an agreement between them, it would seem that it must *for all purposes* be enforceable as such contract between members by the temporal courts (being the only courts left with coercive jurisdiction), but it is doubtful whether this is intended, seeing that there is an express provision that it shall be capable of being enforced in the temporal courts " *in relation to any property which by virtue of this Act is held on behalf of the said Church or any members thereof* " and a further provision is contained in the Bill that the disestablished Church may establish ecclesiastical courts with an appeal (if the Archbishop of Canterbury consents) to the Provincial Court of the Archbishop but no further, and moreover such courts shall not exercise coercive jurisdiction.

If a question of enforcing the implied " agreement between members " arises it can be taken to the temporal courts, at

any rate if an action involving the determination of the dispute can be so framed as to involve a question of property.

5. The Bill not only affects the Church of England as a whole in the manner before indicated, but also more directly particular parishes in English Dioceses and English counties. Parishes in Wales or Monmouthshire but in English dioceses will be taken from those English dioceses and transferred to Welsh dioceses and the disestablishment and disendowment provisions will extend to them. Parishes in Welsh dioceses but in English counties, will be transferred to English dioceses : parishes partly in Wales and partly in England may be treated as wholly English and attached to an English diocese (if not already so attached) or may be treated as wholly Welsh and be attached to a Welsh diocese, and in consequence come within the scope of the disestablishment and disendowment provisions of the Bill, and the guiding consideration towards a determination of the question as to which course shall be adopted is to be found in the "general wishes of the parishioners."

The boundary between the established and disestablished Church will be a county boundary as nearly as possible, but where, as happens with several parishes, the county boundary and the parish boundary do not coincide, the disestablishment and disendowment scheme will follow parish boundaries : so that disestablishment and disendowment may extend into English counties and the Church may remain established and endowed in parts of Welsh counties.

6. While disestablishment as interpreted in these provisions changes the whole character of the Church in Wales and disendowment will make radical changes of organisation and administration inevitable, at the actual moment of disestablishment there can be little visible change. It must take time for the Church to adapt itself to the new conditions, and meanwhile it must make use of its existing organisation of dioceses, archdeaconries, rural deaneries, parishes and so forth, and its existing offices all of which are for the moment occupied by incumbents. The most noticeable immediate change will probably be the abolition of the Ecclesiastical Courts, although these may be re-established but without coercive jurisdiction by the constitutions and regulations to be made by the disestablished Church so soon as it is able to undertake this duty. The maintenance of the existing system and organisation is contemplated by the provision of the Bill, which re-establishes

on the basis of contract between the members of the Church . . . " the existing ecclesiastical law and the articles, doctrines, rites, rules, discipline and ordinances of the Church of England." The Bill, moreover, provides that in all enactments, deeds and other documents in which mention is made of the Church of England the enactments and provisions relating to the Church of England shall be construed as including the Church in Wales, subject, however, to the provisions of the Bill.

7. While, therefore, there is something like an assumption of the continuance of much of the existing organisation of the Church in Wales, the express provisions of the Bill have removed the basis of that organisation and in order to make re-constitution possible it becomes necessary to make provision for something in its place. That provision is in the clauses by which it is enacted that the " bishops, clergy and laity of the Church in Wales " may hold synods and elect representatives thereto, and may " either by themselves or by their representatives elected in such manner as they think fit " " frame constitutions and regulations for the general management and good government of the Church in Wales and the property and affairs thereof whether as a whole or according to dioceses " . . . and if at any time they do " appoint any persons so to represent them and hold property for any of their uses and purposes " his Majesty in Council may by charter incorporate those representatives with power to hold land without licence in mortmain and such body becomes the " Representative Body " of the Church in Wales.

The objects of this Body will presumably be not merely the holding and administration of property for the benefit of the disestablished Church, but also to see to the general management and good government of the Church in Wales. Its formation is essential to the carrying out of the provisions for the redistribution of the properties and endowments of the dissolved corporations and other Church property in Wales, in so far as those provisions relate to the re-transfer of some portion of those properties and endowments to the disestablished Church.

The contingency of a Representative Body not being incorporated within the duration of the powers of the Welsh Commissioners does not seem to be provided for, but as the disestablished Church can only receive back that portion of the endowments which is to be transferred to it by the Welsh Commissioners through its Representative Body, and the

whole government of the disestablished Church would be practically impossible without some such Body as the Representative Body, it was probably unnecessary to provide for such a contingency.

This Representative Body, being incorporated, will hold all the property—cathedrals, churches and their furniture, burial grounds, residences, lands, tithes, funds—of every description which is to be left to the Church and this central holding of the property of the Church in itself must make great changes of organisation necessary.

8. Ecclesiastical benefices being destroyed from the date of disestablishment, the nature of ecclesiastical offices must necessarily be greatly changed, although the interests of existing holders in the emoluments of the offices are preserved. The system of appointment known as patronage (including official as well as private patronage) by which men are transferred from office to office being destroyed as from the date of the passing of the Act, the regulations and constitutions of the Church will have to make fresh provision. Even if this could all be completed by the date of disestablishment it could not apply to that period between the date of the passing of the Act and the date of disestablishment, and hence provisions have to be made for a "suspensory" period between the passing of the Act and the date of disestablishment, and these provisions amount generally to re-establishing for this suspensory period the pre-existing rights of appointment of public or private patrons, so, however, that appointments so made shall not confer upon the appointees vested interests in the endowments of their new offices, which endowments will consequently be diverted from those offices upon the date of disestablishment. If an appointee comes from another Welsh ecclesiastical office he retains an existing interest in his old office, not for himself, but for the benefit of the old office until the date of disestablishment and thereafter until the interest ceases for the benefit of the Representative Body.

One exception is made to the mere re-establishment of the pre-existing rights of appointment during the suspensory period and that is in the case of bishoprics. If a bishop has to be appointed during the suspensory period, he will be nominated by His Majesty on the petition of the Archbishop of Canterbury or of any three Welsh bishops; there will be no *congé d'élire* issued to the dean and chapter.

B. DISENDOWMENT AND DISTRIBUTION OF THE PROPERTY OF THE CHURCH.

1. Before describing the disendowment provisions and the scheme of re-distribution of the Church property it is necessary to explain that, mainly for the purpose of carrying out this part of the Bill, a temporary commission is set up. This is to be a Body Corporate consisting of three members (two paid and one unpaid) appointed by the Crown and the names of the first three will be stated in the Act. This Body, generally referred to as the "Welsh Commissioners," will be fully described as "The Commissioners of Church Temporalities in Wales."

To this Body will be entrusted the work of distribution of the endowments of the disestablished Church, that is to say, of ascertaining of what those endowments consist, of transferring to the disestablished Church that portion which the disestablished Church is to be entitled to claim and of transferring to the several authorities and bodies that portion of the endowments which is to be secularised.

The Welsh Commissioners are temporary and their Commission will have a maximum duration of six years within which time it is assumed that the whole of these re-arrangements will be completed.

The expenses of these Commissioners are to be defrayed out of that part of the funds coming into their hands which does not go eventually either to the disestablished Church or to the County Councils—in other words out of that portion of the funds which will go to the University of Wales.

The Commissioners have not only executive but judicial functions and powers—indeed their duties will be largely judicial.

Parliament will have cognisance of their proceedings because (1) it is provided that they shall make general rules for regulating their procedure which rules need confirmation by His Majesty in Council and are then to be laid before both Houses of Parliament and (2) it is their duty to make an annual Report to the Secretary of State to be laid before Parliament.

In the exercise of their functions they are removed from the control of the High Court, but in a number of matters of primary importance there is either an appeal to the King in Council to be heard by the Judicial Committee or the approval of the Judicial Committee is necessary. Matters in which there is such a right of appeal from the Welsh Commissioners

include any decision of the Welsh Commissioners as to what constitutes a private benefaction, as to compensation to be paid to lay patrons and lay officers, as to the annual sum to be paid by County Councils to persons having existing interests in tithe rent charge transferred to County Councils and as to the value of any glebe, i.e., the value determined by the Welsh Commissioners which is to be paid to them by the Representative Body in respect of glebe (other than private benefactions) to be transferred from the Welsh Commissioners to the Representative Body.

Further, if the Ecclesiastical Commissioners or Queen Anne's Bounty are unable to agree with the Welsh Commissioners as to what is " Welsh ecclesiastical property " vested in them respectively (i.e., briefly property vested in them which is to be transferred to the Welsh Commissioners) then the approval of His Majesty in Council on the advice of the Judicial Committee is to be substituted for the concurrence of the Welsh Commissioners.

Similarly with regard to orders in which the Ecclesiastical Commissioners or Queen Anne's Bounty and the Welsh Commissioners have to concur as to what properties of certain classes constitute private benefactions, the approval of His Majesty in Council on the advice of the Judicial Committee is substituted for the concurrence of any party unable to agree.

Parishioners of border parishes may appeal to the King in Council against an order of the Welsh Commissioners determining whether their parish is to be treated as within Wales or England and any such appeal is to be referred to the Judicial Committee.

2. The Welsh Church Endowments consist of (1) property (land, tithe rentcharge and other real property and capital funds) belonging to the Ecclesiastical Commissioners for their Common Fund and derived from Welsh bishoprics, chapters and Ecclesiastical Offices.

(2) Property belonging to the several ecclesiastical corporations (bishops, deans and chapters, rectors, vicars, etc.) which are to be dissolved—this includes (i) glebe land, tithe rentcharge and other real property, including residence houses, cathedrals, churches and burial grounds, vested in the corporations whether ancient endowments derived from private benefactions or derived from grants of the Ecclesiastical Commissioners and Queen Anne's Bounty ; (ii) capital funds vested in the Ecclesiastical Commissioners or Queen Anne's

Bounty (whether arising from grants made by those bodies, from private benefactions or from proceeds of sale of property of the corporations) or standing in the name of the Paymaster-General of the Supreme Court or held by trustees—in any case in trust for some of the corporations intended to be dissolved and (iii) charges upon the Common Fund of the Ecclesiastical Commissioners granted by way of augmentation of the endowments of some such corporations.

3. As the Welsh Ecclesiastical Corporations are dissolved and there is no intention to allow the Ecclesiastical Commissioners to retain the property they have derived from Welsh bishoprics, Chapters etc., the Bill has to provide for the disposition of the whole of these Welsh Church Endowments.

4. The property of the Ecclesiastical Commissioners, derived from Welsh preferments in the main, furnishes the incomes of the bishops, deans, canons and archdeacons and provides for other non-parochial purposes : there is some property also held by deans and canons for non-parochial purposes. The rest of the Welsh Church Endowments as above described (other than the Fabrics) are held for the purpose of providing the incomes of the parochial clergy.

The property of the Ecclesiastical Commissioners, as above described, may be said to be derived wholly from ancient property of the Church in Wales, and this is mainly if not wholly true of the endowments held by deans and chapters.

5. The property of parochial benefices, however, is by no means wholly derived from ancient property of the Welsh Church ; whether it consists of land, tithe rentcharge, capital funds or annuities, it may be or represent

(i) ancient Welsh Church property (including ancient endowments of the benefices and augmentations of such endowments made by grant by the Ecclesiastical Commissioners of lands and tithe rentcharges derived by them from Welsh bishoprics and other preferments).

(ii) grants of capital sums made by the Governors of Queen Anne's Bounty from the Parliamentary Grants Fund. (This the Bill treats in the same way as property derived from ancient Welsh Church Endowments).

(iii) grants of capital sums made by the Governors of Queen Anne's Bounty from the Welsh sources of their Royal Bounty Fund. (It appeared in the evidence placed before the Welsh Church Commission that roughly

one-third of all the grants of Queen Anne's Bounty from their Royal Bounty Fund came from Welsh sources).

(iv) grants of capital sums made by the Governors of Queen Anne's Bounty from English Church sources of their Royal Bounty Fund. (It appeared in the evidence placed before the Welsh Church Commission that roughly two-thirds of all the grants of Queen Anne's Bounty from their Royal Bounty Fund came from English Church sources.)

(v) grants of capital sums made by the Ecclesiastical Commissioners from English Church sources. (It appeared in the evidence placed before the Welsh Church Commission that the whole of the revenues of the Commissioners from property derived from Welsh Church sources, after the grants of actual land and tithe rentcharge to benefices, as above mentioned, did not more than suffice to pay the charges borne by the Commissioners for the incomes of bishops, deans and canons, archdeacons and for other non-parochial purposes. Consequently, all grants of capital sums and annuities made by the Commissioners in favour of parochial benefices have come from English Church sources.)

(vi) grants of annuities charged upon the Common Fund of the Ecclesiastical Commissioners and borne for the reason above stated by English resources of the Commissioners—including grants for curates as well as grants for incumbents.

(vii) private benefactions—that is to say—gifts from private resources since the year 1662.

6. It is necessary to bear in mind these two classifications of the Welsh Church endowments according to (a) present application to respectively diocesan and parochial purposes, and (b) origin—either from ancient endowments of the Welsh Church, subventions from the English Church or private benefactions, as these distinctions are used in the Bill (1) in determining whether the endowments shall be retained for the Church or shall be secularised and (2) in determining the application of that part which is to be secularised.

7. The distribution of the property which the Bill proceeds to make is all subject to the preservation of existing interests, that is to say, that as to all property which is held by or for the personal benefit of an incumbent of an ecclesiastical office held by a freehold tenure or a tenure which the Welsh

Commissioners may deem to be equal to a freehold tenure, it is provided that into whosesoever hands it may go—the Ecclesiastical Commissioners, Queen Anne's Bounty, the Representative Body, the Welsh Commissioners, a County Council or the University of Wales—it must be taken subject to the right of the holder of that office, if he held it at the date of the passing of the Act, to continue in possession of the property or receipt of the income therefrom (or as to tithe rentcharge transferred to a County Council to receive an annual sum equal to the net annual value thereof) so long as he continues to hold the office or any other Ecclesiastical Office in the Church in Wales. He retains this existing interest for his own benefit as long as he retains the office in respect of which it arises, and for the benefit of the Representative Body if he vacates the office by removal to another ecclesiastical office in the Church in Wales. If he finally retires from the service of the Church in Wales on the ground of incapacity by reason of permanent mental or bodily infirmity he has a right to receive during the remainder of his life for his own benefit an annuity equal to one-third of the average net income of the office in which he had an existing interest, and this is payable out of the endowments in the hands of the various Bodies to whom they have been transferred.

The result of this saving of vested interests is, of course, to delay the ultimate division, so far, at any rate, as beneficial enjoyment goes, of the endowments distributed.

8. Subject to vested interests saved to the extent and in the manner indicated in the preceding clause, the distribution of the existing Church endowments which is effected by the Bill is as hereinafter stated. As a matter of machinery all the property which goes ultimately to County Councils, the University of Wales or any other secular authority or Body, and all the property (e.g. cathedrals, churches, burial grounds, residences and private benefactions or the proceeds thereof) which goes ultimately to the Representative Body by the claim given to them by the Bill (as distinct from the property which may go to the Representative Body by favour of the Ecclesiastical Commissioners and Queen Anne's Bounty) passes first to the Welsh Commissioners (excepting only the plate, furniture and other moveable chattels belonging to any Church which pass directly to the Representative Body on its formation from the persons in whom they were vested before disestablishment).

A. The Representative Body will receive

The cathedral and other churches.

The ecclesiastical residences and proceeds of sale of residences and funds held for the building, provision or repair of such residences and any building or repair funds of churches (if any such are by the operation of the Act divested out of their present holders).

Any closed burial grounds which the Representative Body desire to have (other than such as have been derived from private benefactions, as to which see the next item). All the above would form part of the class 5 (i) above.

The land, tithe rentcharge, stocks and funds representing private benefactions since 1662 (see 5 (vii) above). (This would include some churchyards or burial grounds closed or open).

The income from these private benefactions is about £18,500 per annum.

Other glebe lands (see under E below) subject to payment of their value to the Welsh Commissioners.

B. The Ecclesiastical Commissioners will resume and are permitted to transfer to the Representative Body

The land, tithe rentcharge, stocks and funds representing grants of capital sums made by the Commissioners to parochial benefices (see 5 (v) above). The annuities charged upon the Common Fund of the Ecclesiastical Commissioners for the augmentation of parochial benefices and provision of stipends for assistant curates (see 5 (vi) above).

Some of these annuities are temporary, but the Bill permits the Ecclesiastical Commissioners to convert them into a permanent annuity for the benefit of the Representative Body.

The income from the property so resumed is about £50,000 per annum.

C. The Governors of Queen Anne's Bounty will resume and are permitted to transfer to the Representative Body

The land, tithe rentcharge, stocks and funds representing the two-thirds share derived from English sources of the grants of capital sums made by the Governors to parochial benefices out of their Royal Bounty Fund (see 5 (iv) above).

The income from the property so resumed is about £19,000 per annum.

D. Local Burial Authorities (Parish, Urban District and Borough Councils, etc.) will receive

The open parochial churchyards or burial grounds not provided by private benefactions (included in 5 (i) above).

E. The County Councils will receive

The tithe rentcharge (other than as above described under A. B. and C.) of parochial benefices arising within their counties or within English counties (the latter to be assigned to such counties in Wales and Monmouthshire as the Welsh Commissioners think fit). (Such tithe rentcharge would be included in the classes 5 (i) (ii) (iii) above.)

The value of the glebe lands (other than as above described under A. B. and C.) of parochial benefices within their counties (such glebe lands would be included in the classes 5 (i) (ii) (iii) above).

The actual glebe lands of this class are to be transferred to the Representative Body (see under A, above) but that Body is to pay to the Welsh Commissioners the value thereof.

The stocks or funds representing the proceeds of sale or redemption of such tithe rentcharge or of transactions in relation to such glebe land (e.g. mineral royalties) (such property would be included in 5 (i) (ii) and (iii) above).

The income from the parochial property so to be transferred to the County Councils includes about £14,000 a year derived from grants of land and tithe rentcharge made by the Ecclesiastical Commissioners out of the "Central" property of the Welsh Church coming from the bishoprics, chapters, etc.; about £9,000 per annum from Welsh sources of the Royal Bounty Fund of Queen Anne's Bounty; about £6,000 per annum from the Parliamentary Grants Fund of Queen Anne's Bounty; and about £116,000 from ancient endowments of Welsh benefices—total about £145,000.

F. The University of Wales will receive

The residue of the endowments transferred to the Welsh Commissioners, such residue consisting of

(1) The property (land, tithe rentcharge, and other real property and the proceeds of sale thereof) now belonging to the Ecclesiastical Commissioners and derived

from Welsh bishoprics and other Ecclesiastical Corporations (see 4 above).

This would not include all the Ecclesiastical Commissioners' real property in Wales and Monmouthshire (as some of it has been derived from English Church Preferments). On the other hand, it would include some real property in England formerly belonging to Welsh Preferments.

It is therefore provided that an adjustment shall be made. The Ecclesiastical Commissioners shall retain their property in England derived from Welsh Church Preferments, but there shall be transferred to the University of Wales the much larger English Church property of the Commissioners in Wales and Monmouthshire and the Ecclesiastical Commissioners shall be allowed to retain out of the capital sum representing proceeds of former sales of Welsh Church property the sum representing the equality of exchange.

The income from the "Central" property of the Welsh Church so transferred amounts to about £27,500 per annum.

(2) Ancient endowments or property or funds representing the same (and being other than charges on the Common Fund of the Ecclesiastical Commissioners) belonging to bishops, deans and chapters and other non-parochial offices (see 4 above).

The expenses incurred by the Welsh Commissioners in carrying the Act into effect are to fall wholly upon the property transferred to the University of Wales.

The sums payable by way of compensation to private patrons and to holders of lay ecclesiastical offices will be provided rateably out of the property transferred to the University and to the County Councils respectively.

9. The figures as to income of the various classes of property given above are derived from the Report of the Welsh Church Commission. The Report contains a statement of the endowments applicable to Welsh Church purposes in the year 1906 as laid before that Commission in evidence and the figures so given in evidence are reduced to net figures in the Memorandum of Archdeacon Evans and Lord Hugh Cecil appended to that Report (see Vol. I. Part I., pp. 84–86). Between 1906 and 1912 the figures have considerably changed (especially

by the addition to Welsh Church resources of private benefactions and grants from the Ecclesiastical Commissioners and the Governors of Queen Anne's Bounty) but the net figures of 1906 from the source above mentioned are given here as they were adopted by Mr. McKenna in his speech on the introduction of the Bill.

10. The Bill deals also with property which is not Welsh Church property but English Church property held by the Ecclesiastical Commissioners and Queen Anne's Bounty which has not been applied to Welsh Church purposes and which but for the special provisions of the Bill would after disestablishment be applicable only to English Church purposes. The Bill authorises those Bodies respectively to grant by way of a new provision for the Welsh disestablished Church charges on their respective corporate properties (being English Church properties) in the form of perpetual annuities to be payable to the Representative Body equal to the annual amounts given for the augmentation of benefices or towards the stipends of assistant clergy in Wales and Monmouthshire out of their respective annual appropriations of surplus income from English Church sources on the average of the last seven years.

The maximum new perpetual annuity which might be granted by the Ecclesiastical Commissioners, if they were able to grant it and considered that with due regard to the interests of the English Church from which it would be taken they could properly grant it, would be about £28,000 per annum.

Similarly the maximum new perpetual annuity which the Governors of Queen Anne's Bounty might grant would be about £3,000 per annum.

11. Application of the endowments so appropriated.

The Representative Body will hold the property transferred to them to be applied for the general good of the disestablished Church.

The County Councils will apply the property transferred to them, in accordance with schemes to be made by them and approved by the Secretary of State, to any charitable, eleemosynary or public purpose of local or general utility and in framing those schemes due regard must be had to the wants and circumstances of the parish in which the property is situate or from which it has been derived *and* of the parish comprising the ecclesiastical parish to which the property was formerly attached.

The University of Wales is to apply the property transferred to them in making payments of capital or annual sums for the benefit of the three Colleges—the University College of Wales, Aberystwith, the University College of North Wales, and the University College of South Wales and Monmouthshire—and of the two national institutions, the National Library of Wales and the National Museum of Wales, each College receiving a fourth share of the whole, and the Library and Museum each receiving an eighth share of the whole.

EFFECT OF THE BILL ON ENDOWMENTS OF BENEFICES.

Division of Revenues between Church and Secular Purposes.

Corporation to whom Revenues transferred.		Land.	Tithe Rent-charge.	Other Income.
		£	£	£
Ecclesiastical Commissioners	gross	—	—	31,833
	net	—	—	31,833
Queen Anne's Bounty ...	gross	11,803	994	8,288
	net	9,738	580	8,288
Representative Body ...	gross	3,173	5,627	12,639
	net	2,617	3,281	12,639
TOTAL	gross	14,976	6,621	52,760
	net	12,355	3,861	52,760
Welsh Commissioners, for secular purposes	gross	28,483	183,330	16,132
	net	23,499	106,905	16,132
GRAND TOTAL ...	gross	£43,459	£189,951	£68,892
	net	£35,854	£110,765	£68,892

The gross figures are those given in the Return contained in Appendix A. Vol. I. Part II of the Report of the Welsh Church Commission, tithe rentcharge being stated at its commutation amount.

The division has been made on the basis that two-thirds of the income arising from grants out of the Royal Bounty Fund of Queen Anne's Bounty will be retained for Church purposes as being derived from English Church sources, though the proportion is not in fact exactly two-thirds.

Land and tithe rentcharge acquired through the Ecclesiastical Commissioners have been treated as wholly annexed out of Welsh Church property of the Commissioners, and consequently as wholly to

be secularised. Part, however, of such property has been annexed out of English Church property of the Commissioners, but the amount of this has not been published, and part (to the value of about £330 per annum net) has been purchased for Benefices out of capital grants of the Commissioners from English Church sources. The figures need adjustment in this respect, and the effect of the adjustment will be that a somewhat larger amount of the revenues will be retained for Church purposes, and a correspondingly smaller amount secularised.

The Ecclesiastical Revenues dealt with by the Bill other than those of Benefices as above stated are those of the Ecclesiastical Commissioners derived from Welsh Church preferments (said to be of the value of about £27,500 per annum), and those of the Deans and Chapters and any other Corporations aggregate (excepting charges on the Common Fund of the Commissioners). The extent of such property of these Corporations is believed not to be considerable.

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